

SUMMONS (CITACION JUDICIAL)

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

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

SAN GABRIEL TEMPORARY STAFFING SERVICES LLC dba
LABORMAX STAFFING, a California limited liability company; and
DOES 1-50, Inclusive,

Electronically Filed
Superior Court of California
County of San Joaquin
2024-02-01 13:45:47
Clerk: Kacey Sutton

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

BRIAN ACIO, 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):

San Joaquin Superior Court
180 E Weber Ave.
Stockton, CA 95202

CASE NUMBER: STK-CV-UOE-2024-0001294
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 2024-02-01 Stephanie Bohrer Clerk, by _____, 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):



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19 Attorneys for PLAINTIFF

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

22 BRIAN ACIO, an individual, on behalf of
23 himself, and on behalf of all persons similarly
24 situated,

25 Plaintiff,

26 v.

27 SAN GABRIEL TEMPORARY STAFFING
28 SERVICES LLC dba LABORMAX
STAFFING, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No: STK-CV-UOE-2024-0001294

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

1 PLAINTIFF BRIAN ACIO (“PLAINTIFF”), an individual, in his representative capacity
2 and on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against SAN GABRIEL TEMPORARY STAFFING SERVICES
4 LLC dba LABORMAX STAFFING, a California limited liability company (“DEFENDANT”
5 and/or “DEFENDANTS”), alleges on information and belief, except for his own acts and
6 knowledge which are based on personal knowledge, the following:

7 **INTRODUCTION**

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

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

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

- 17 a. Failure to provide compliant meal and rest periods;
- 18 b. Failure to allow employees to take duty-free meal and rest periods;
- 19 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 20 d. Failure to correctly calculate the regular rate of pay;
- 21 e. Failure to pay within seven (7) days of the close of payroll;
- 22 f. Failure to pay for all hours worked;
- 23 g. Failure to maintain true and accurate records;
- 24 h. Failure to reimburse for required business expenses;
- 25 i. Failure to provide accurate itemized wage statements; and
- 26 j. Failure to timely pay wages due during, and upon termination of employment.

1 maintained offices and facilities in this County and/or conducted substantial business in this
2 County, and (ii) committed the wrongful conduct herein alleged in this County against
3 AGGRIEVED EMPLOYEES.

4 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
26 the time during which an employee is subject to the control of an employer, including all the time
27 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,
28 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying

1 them for all the time they were under DEFENDANT’s control. Specifically, DEFENDANT
2 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’S
3 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
4 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
5 minimum wage and overtime compensation by regularly working without their time being
6 accurately recorded and without compensation at the applicable minimum wage and overtime
7 rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other
8 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT’s business
9 records.

10 20. From time to time during the PAGA PERIOD, as a result of their rigorous work
11 schedules and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
13 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
14 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
15 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT
16 fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal
17 period for some workdays in which these employees are required by DEFENDANT to work ten
18 (10) hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
19 EMPLOYEES does not qualify for the limited and narrowly construed “on-duty” meal period
20 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were, from time to time, required to remain on duty and on call. DEFENDANT’s
22 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members with legally
23 required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and
24 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and
25 in accordance with DEFENDANT’s strict corporate policy and practice.

26 **B. Rest Period Violations**

27 21. From time to time during the PAGA PERIOD, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being

1 provided ten (10) minute rest periods as a result of their rigorous work requirements and
2 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
3 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
4 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
5 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
7 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call
9 and/or on the premises. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not
10 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
11 DEFENDANT's inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
12 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
13 managers.

14 **C. Unreimbursed Business Expenses**

15 22. 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 other AGGRIEVED EMPLOYEES for required business expenses incurred by the
18 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
19 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
20 required to indemnify employees for all expenses incurred in the course and scope of their
21 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
24 even though unlawful, unless the employee, at the time of obeying the directions, believed them
25 to be unlawful."

26 23. In the course of their employment, DEFENDANT required PLAINTIFF and other
27 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones
28 and purchase their own tools as a result of and in furtherance of their job duties. Specifically,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own cell phones
2 purchase their own tools in order to perform work related tasks. However, DEFENDANT
3 unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the
4 personal expenses incurred for the use of their personal cell phones purchase of their own tools.
5 As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other
6 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were
7 not limited to, costs related to the use of their personal cell phones purchase of their owl tools, all
8 on behalf of and for the benefit of DEFENDANT.

9 **D. Wage Statement Violations**

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

18 25. From time to time during the PAGA PERIOD, when PLAINTIFF and other
19 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
20 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
21 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
22 statements which failed to show, among other things, all deductions, the total hours worked and
23 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
24 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
25 periods.

26 26. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
27 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
28 with Cal. Lab. Code § 226.

1 27. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES
2 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT’s violations are
3 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or
4 inadvertent mistake.

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

6 28. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
7 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
8 worked.

9 29. During the PAGA PERIOD, from time-to-time DEFENDANT required
10 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
11 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

12 30. DEFENDANT directed and directly benefited from the undercompensated off-the-
13 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

14 31. DEFENDANT controlled the work schedules, duties, and protocols, applications,
15 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

16 32. DEFENDANT was able to track the amount of time PLAINTIFF and
17 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
18 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
19 they performed.

20 33. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
21 subject to the requirements of the California Labor Code.

22 34. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
24 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES
25 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
26 DEFENDANT’s policies and practices also deprived them of overtime pay.

27 35. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
28 EMPLOYEES’ off-the-clock work was compensable under the law.

1 36. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
2 them for all hours worked at DEFENDANT’s direction, control, and benefit for the time spent
3 working while off-the-clock. DEFENDANT’s uniform policy and practice to not pay PLAINTIFF
4 and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law
5 is evidenced by DEFENDANT’s business records.

6 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
7 **and Redeemed Sick Pay**

8 37. From time to time during the PAGA PERIOD, DEFENDANT failed and continues
9 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES
10 for their overtime and double time hours worked, meal and rest period premiums, and redeemed
11 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
12 due to them for working overtime without compensation at the correct overtime and double time
13 rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT’s uniform
14 policy and practice not to pay the AGGRIEVED EMPLOYEES Members at the correct rate for
15 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
16 accordance with applicable law is evidenced by DEFENDANT’s business records.

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

21 39. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES’
22 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
23 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for
24 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
25 basis with bonus compensation when the employees met the various performance goals set by
26 DEFENDANTS.

27 40. From-time-to-time, when calculating the regular rate of pay, in those pay periods
28 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid

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

17 41. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
19 matter of company policy, practice, and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
21 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
22 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
23 overtime and double time compensation, meal and rest period premiums, and sick pay as required
24 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
25 over competitors who complied with the law. To the extent equitable tolling operates to toll
26 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA
27 PERIOD should be adjusted accordingly.

28 **G. Sick Pay Violations**

1 42. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
2 July 1, 2015, works in California for the same employer for 30 or more days within a year from
3 the commencement of employment is entitled to paid sick days as specified in this section.”
4 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
5 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
6 and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

7 43. California Labor Code Section 246(i) requires an employer to furnish its
8 employees with written wage statements setting forth the amount of paid sick leave available.
9 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
10 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick
11 leave available.

12 **H. Violations for Untimely Payment of Wages**

13 44. Pursuant to California Labor Code section 204, PLAINTIFF and the
14 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
15 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
16 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
17 meal period premium wages, and rest period premium wages within permissible time period.

18 45. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
19 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
20 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
21 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
22 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
23 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
24 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
25 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

26 46. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
27 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
28 employment ended during the PAGA PERIOD.

1 **I. Unlawful Deductions**

2 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
4 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
5 DEFENDANTS violated Labor Code § 221.

6 **J. Unlawful Rounding Practices**

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

19 49. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
20 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES’ time
21 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
22 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
23 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
24 duty meal break.

25 **K. Timekeeping Manipulation**

26 50. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
27 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
28 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each

1 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
2 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in
3 DEFENDANT’S timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order
4 to avoid paying these employees for all hours worked, applicable overtime compensation,
5 applicable sick pay, missed meal breaks and missed rest break.

6 51. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
7 forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

9 52. The mutability of the timekeeping system also allowed DEFENDANTS to alter
10 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’S
11 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
12 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
13 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT’S
14 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
15 breaks each day or otherwise compensate them for missed meal breaks.

16 53. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANT’S direction, control and benefit for the time the
18 timekeeping system was inoperable. DEFENDANT’S uniform policy and practice to not pay
19 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
20 applicable law is evidenced by DEFENDANT’S business records.

21 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
23 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which they were
26 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
27 PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and
28 on-call for the rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-

1 duty during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited
2 meal and rest breaks without additional compensation and in accordance with DEFENDANT'S
3 strict corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with
4 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to
5 reimburse PLAINTIFF for required business expenses related to the use of his personal cell
6 phone and the purchase of his own tools, on behalf of and in furtherance of his employment with
7 DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime
8 and double time compensation still owed to them or any penalty wages owed to them under Cal.
9 Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the
10 sum or value of \$75,000.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **(Cal. Lab. Code §§2698 et seq.)**

14 **(Alleged by PLAINTIFF against all Defendants)**

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

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

27 57. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to himself
2 and all individuals who are or previously were employed by Defendant in California and
3 classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of
4 November 27, 2022, and the present (“PAGA Period”).

5 58. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
6 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
7 meaning of Labor Code Section 2699(c).

8 59. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
9 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
10 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
11 2699.3

12 60. PLAINTIFF complied with the procedures for bringing suit specified in Labor
13 Code Section 2699.3. By certified letter, return receipt requested, dated November 27, 2023,
14 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. See **Exhibit #1**.

16 61. As of the date of this complaint, more than sixty-five (65) days after serving the
17 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
18 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
19 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
20 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

21 62. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
22 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
23 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
24 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
25 2804 in the following amounts:
26

- 27 a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred
28 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the

1 initial violation and two hundred dollars (\$200) for AGGRIEVED
2 EMPLOYEE per pay period for each subsequent violation [penalty per Labor
3 Code Section 2699(f)(2)];

4 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
5 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
6 any initial violation and one thousand dollars for each subsequent violation
7 [penalty per Labor Code Section 226.3];

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

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

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

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

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

1 violation [penalty per Labor Code Section].

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

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

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

Dated: February 1, 2024

**ZAKAY LAW GROUP, APLC
JCL LAW FIRM, APC**

By: 

Shani O. Zakay, Esq.
Monnett De La Torre, Esq.
Jean-Claude Lapuyade, Esq.
Andrea Amaya, Esq.

Attorneys for Plaintiff

EXHIBIT 1



Client #67101

November 27, 2023

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

Online Filing

**SAN GABRIEL TEMPORARY STAFFING SERVICES LLC dba LABORMAX
STAFFING**

c/o National Registered Agents, Inc.

330 N Brand Blvd, Ste. 700

Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1466 9055 78**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff BRIAN ACIO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant SAN GABRIEL TEMPORARY STAFFING SERVICES LLC dba LABORMAX STAFFING (“Defendant”). Plaintiff was employed by Defendant from June of 2018 to February of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

Very truly yours,

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

1 **JCL LAW FIRM, APC**
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13 shani@zakaylaw.com

14 Attorneys for PLAINTIFF

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

17 BRIAN ACIO, an individual, on behalf of
18 himself, and on behalf of all persons similarly
19 situated,

20 Plaintiffs,

21 v.

22 SAN GABRIEL TEMPORARY STAFFING
23 SERVICES LLC dba LABORMAX
24 STAFFING, a California limited liability
25 company; and DOES 1-50, Inclusive,

26 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

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- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant SAN GABRIEL TEMPORARY STAFFING SERVICES LLC dba LABORMAX STAFFING (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates a staffing and recruiting company throughout the state of California, including the county of San Joaquin, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from June of 2018 to February of 2023 as a non-exempt employee, 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.

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

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

12 6. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
18 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

21 7. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
26 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

THE CONDUCT

1
2 14. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
4 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
11 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
12 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
13 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
14 applicable hourly rates in effect during the pay periods and the corresponding amount of time
15 worked at each hourly rate and/or failing to adhere to Labor Code Section 226(a)(1)-(9).
16 DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate
17 and full payment for all time worked as required by California law which allows DEFENDANT
18 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
19 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
20 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

21 **A. Meal Period Violations**

22 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
24 meaning the time during which an employee is subject to the control of an employer, including
25 all the time the employee is suffered or permitted to work. From time to time during the CLASS
26 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
27 without paying them for all the time they were under DEFENDANT’s control. Specifically,
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
2 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited minimum wage and overtime compensation by regularly working without their
4 time being accurately recorded and without compensation at the applicable minimum wage and
5 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
7 records.

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

24 **B. Rest Period Violations**

25 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
26 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
27 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
28 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied

1 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
2 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
3 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
4 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
5 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
6 CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF
7 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
8 thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing,
9 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
10 proper rest periods by DEFENDANT and DEFENDANT's managers.

11 **C. Unreimbursed Business Expenses**

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

23 19. In the course of their employment, DEFENDANT required PLAINTIFF and other
24 CALIFORNIA CLASS Members to use their personal cell phones and purchase their own tools
25 as a result of and in furtherance of their job duties, including but not limited to receiving and/or
26 responding to work-related communications and performing work-related duties. However,
27 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
28 Members for the use of their personal cell phones and the purchase of their own tools. As a result,

1 in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
2 CLASS Members incurred unreimbursed business expenses that included, but were not limited
3 to, costs related to the use of their personal cell phones and the purchase of their own tools.

4 **D. Wage Statement Violations**

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

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

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

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

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

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

5 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
8 work while off-the-clock.

9 26. DEFENDANT directed and directly benefited from the undercompensated off-the-
10 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

7 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
8 **and Redeemed Sick Pay**

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

18 34. State law provides that employees must be paid overtime at one-and-one-half times
19 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
20 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
21 employee’s performance.

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

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

19 37. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
24 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
25 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
26 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
27 CLASS PERIOD should be adjusted accordingly.

28 ///

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

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

7 39. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
8 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
9 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
10 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
11 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
12 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
13 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
14 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

15 40. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
16 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
17 employment ended during the CLASS PERIOD.

18 **H. Unlawful Deductions**

19 41. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
20 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
21 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
22 violated Labor Code § 221.

23 **I. Timekeeping Manipulation**

24 42. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
25 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
26 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
27 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
28 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and

1 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
2 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
3 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
4 missed rest breaks.

5 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
6 time-to-time, forfeited time worked by working without their time being accurately recorded and
7 without compensation at the applicable pay rates.

8 44. The mutability of the timekeeping system also allowed DEFENDANT to alter
9 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’S
10 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
11 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
12 were not at all times provided an off-duty meal break. This practice is a direct result of
13 DEFENDANT’S uniform policy and practice of denying employees uninterrupted thirty (30)
14 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

15 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due to them for all hours worked at DEFENDANT’S direction, control and
17 benefit for the time the timekeeping system was inoperable. DEFENDANT’S uniform policy
18 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
19 all hours worked in accordance with applicable law is evidenced by DEFENDANT’S business
20 records.

21 **J. Unlawful Rounding Practices**

22 46. 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,
25 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
26 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
27 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
28 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS’ timekeeping

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

6 47. Further, the mutability of DEFENDANTS' 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, DEFENDANTS' unlawful rounding
9 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
10 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
11 off-duty meal break.

12 **K. Sick Pay Violations**

13 48. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
14 July 1, 2015, works in California for the same employer for 30 or more days within a year from
15 the commencement of employment is entitled to paid sick days as specified in this section."
16 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
17 From time to time, DEFENDANT failed to have a policy or practice in place that provided
18 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
19 leave.

20 49. California Labor Code Section 246(i) requires an employer to furnish its
21 employees with written wage statements setting forth the amount of paid sick leave available.
22 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
23 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
24 forth the amount of paid sick leave available.

25 50. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
26 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
27 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which they were
2 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
4 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
5 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
6 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
7 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
8 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
9 PLAINTIFF for required business expenses related to the use of his personal cell phone and the
10 purchase of his own tools, on behalf of and in furtherance of his employment with
11 DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime
12 and double time compensation still owed to them or any penalty wages owed to them under Cal.
13 Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the
14 sum or value of \$75,000.

15 **CLASS ACTION ALLEGATIONS**

16 51. PLAINTIFF brings this Class Action on behalf of himself, and a California class
17 defined as all persons who are or previously were employed by DEFENDANT in California and
18 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
19 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
20 by the Court (the “CLASS PERIOD”).

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

27 53. The members of the class are so numerous that joinder of all class members is
28 impractical.

1 54. Common questions of law and fact regarding DEFENDANT’s conduct, including
2 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
3 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
4 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
5 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
6 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
7 at least minimum wage and overtime, exist as to all members of the class and predominate over
8 any questions affecting solely any individual members of the class. Among the questions of law
9 and fact common to the class are:

- 10 a. Whether DEFENDANT maintained legally compliant meal period policies and
11 practices;
- 12 b. Whether DEFENDANT maintained legally compliant rest period policies and
13 practices;
- 14 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
15 Members accurate premium payments for missed meal and rest periods;
- 16 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members accurate overtime wages;
- 18 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members at least minimum wage for all hours worked;
- 20 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
21 CLASS Members for required business expenses;
- 22 g. Whether DEFENDANT issued legally compliant wage statements;
- 23 h. Whether DEFENDANT committed an act of unfair competition by systematically
24 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
25 CLASS for all time worked;
- 26 i. Whether DEFENDANT committed an act of unfair competition by systematically
27 failing to record all meal and rest breaks missed by PLAINTIFF and other
28 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit

1 of this work, required employees to perform this work and permits or suffers to
2 permit this work;

3 j. Whether DEFENDANT committed an act of unfair competition in violation of the
4 UCL, by failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 55. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANT's conduct and actions alleged herein.

8 56. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
9 PLAINTIFF have the same interests as the other members of the class.

10 57. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 58. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 59. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
15 interest of the other CALIFORNIA CLASS Members.

16 60. There is a strong community of interest among PLAINTIFF and the members of
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
19 sustained.

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

23 62. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,
25 since the damages suffered by individual members of the class may be relatively small, the
26 expense and burden of individual litigation makes it practically impossible for the members of
27 the class individually to redress the wrongs done to them. Without class certification and
28 determination of declaratory, injunctive, statutory, and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
2 will create the risk of:

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

10 63. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANT.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

17 64. 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 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 67. By the conduct alleged herein, DEFENDANT has engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
7 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
9 constitute unfair competition, including restitution of wages wrongfully withheld.

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

15 69. By the conduct alleged herein, DEFENDANT's practices were deceptive and
16 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
17 mandated meal and rest periods and the required amount of compensation for missed meal and
18 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
19 necessary business expenses incurred, due to a systematic business practice that cannot be
20 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
21 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
22 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
23 restitution of wages wrongfully withheld.

24 70. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.

28 71. By the conduct alleged herein, DEFENDANT's practices were also unfair and
deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 77. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

23 82. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 83. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 84. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
3 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 85. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

10 86. In committing these violations of the California Labor Code, DEFENDANT
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
13 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
14 violation of the California Labor Code, the Industrial Welfare Commission requirements and
15 other applicable laws and regulations.

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

19 88. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
21 failure to pay all earned wages.

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

27 90. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
3 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

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

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

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1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 100. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

10 101. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
12 overtime compensation for their time worked for DEFENDANT.

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

21 103. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
23 constituting a failure to pay all earned wages.

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

1 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
2 records and witnessed by employees.

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

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

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

23 108. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and

1 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
2 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Provide Required Rest Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

11 113. 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.

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

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

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

9 **SIXTH CAUSE OF ACTION**

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

11 **(Cal. Lab. Code §§ 2802)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

16 118. Cal. Lab. Code § 2802 provides, in relevant part, that:
17 An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

20 119. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
22 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
23 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
24 members for expenses which included, but were not limited to, their personal cell phones and
25 the cost of tools as a result of and in furtherance of their job duties, including but not limited to
26 receiving and/or responding to work-related communications and performing work-related
27 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
28 DEFENDANTS to use their personal cell phones and purchase their own tools to execute their

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

11 120. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
12 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
13 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
14 statutory rate and costs under Cal. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

19 121. 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.

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

- 24 a. Gross wages earned,
25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission,

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

123. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, 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, and correct rates of pay for penalty payments or missed meal and rest periods.

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

125. 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

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to
4 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
5 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
6 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
7 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
8 member of the CALIFORNIA CLASS herein).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

16 127. Cal. Lab. Code § 200 provides that:

17 As used in this article:

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

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

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

28 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

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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.

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

131. 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.

132. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

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

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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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.

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: November 27, 2023

JCL LAW FIRM, APC



By: _____

Jean-Claude, Lapuyade, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: November 27, 2023

JCL LAW FIRM, APC



By: _____

Jean-Claude, Lapuyade, Esq.
Attorney for PLAINTIFF