

# SUMMONS

## (CITACION JUDICIAL)

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

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

MANLY ENTERPRISES INCORPORATED, a California corporation; FOREIGN AUTOMOTIVE, a California corporation; (Additional Parties Attachment form is attached)

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

Peter Smart, an individual, on behalf of himself, and on behalf of all persons similarly situated

**ELECTRONICALLY FILED**  
**Superior Court of California**  
**County of Sonoma**  
**2/4/2025 4:53 PM**  
**By: Taylor Curtis, Deputy Clerk**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov](http://www.sucorte.ca.gov)), 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Hall of Justice

600 Administration Drive, Santa Rosa, California 95403

CASE NUMBER:  
(Número del Caso): 25CV00081

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:  
(Fecha) 2/4/2025 4:53 PM

Robert Oliver Clerk, by  
(Secretario)

Taylor Curtis, Deputy  
(Adjunto)

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

[SEAL]



### NOTICE TO THE PERSON SERVED: You are served

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

|                                                                 |              |
|-----------------------------------------------------------------|--------------|
| SHORT TITLE:<br>Smart v. Manly Enterprises Incorporated, et al. | CASE NUMBER: |
|-----------------------------------------------------------------|--------------|

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

MANLY AUTOMOTIVE GROUP, an unknown business entity; and DOES 1-50, Inclusive,

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SONOMA**

PETER SMART, an individual, on behalf of  
himself, and on behalf of all persons similarly  
situated,

Plaintiff,

v.

MANLY ENTERPRISES INCORPORATED,  
a California corporation; FOREIGN  
AUTOMOTIVE, a California corporation;  
MANLY AUTOMOTIVE GROUP, an  
unknown business entity; and DOES 1-50,  
Inclusive,

Defendants.

Case No: 25CV00931

**CLASS ACTION COMPLAINT FOR:**

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

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- 7) FAILURE TO PROVIDE WAGES WHEN  
DUE IN VIOLATION OF CAL. LAB.  
CODE §§ 201, 202 AND 203;  
8) FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN  
VIOLATION OF CAL. LAB. CODE § 2802;  
9) FAILURE TO PERMIT INSPECTION OF  
EMPLOYEE RECORDS IN VIOLATION  
OF CAL. LAB. CODE § 1198.5.

**DEMAND FOR A JURY TRIAL**

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

**PRELIMINARY ALLEGATIONS**

1. Defendant MANLY ENTERPRISES INCORPORATED (“Defendant Manly  
Enterprises”) is a California corporation that at all relevant times mentioned herein conducted and  
continues to conduct substantial and regular business throughout California.

2. Defendant FOREIGN AUTOMOTIVE (“Defendant Foreign Automotive”) is a  
California corporation that at all relevant times mentioned herein conducted and continues to  
conduct substantial and regular business throughout California.

3. Defendant MANLY AUTOMOTIVE GROUP (“Defendant Manly Automotive  
Group”) is an unknown business entity that at all relevant times mentioned herein conducted and  
continues to conduct substantial and regular business throughout California.

4. Defendant Manly Enterprises and/or Defendant Foreign Automotive and/or  
Defendant Manly Automotive Group were the joint employers of PLAINTIFF as evidenced by  
the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for  
respectively and are therefore jointly responsible as employers for the conduct alleged herein as  
“DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS operate car dealerships throughout California, including in the  
county of Sonoma, where PLAINTIFF worked.

1           6.     PLAINTIFF was employed by DEFENDANTS in California from October 2023  
2 to August of 2024, paid in part commission-based compensation and in part an hourly wage, non-  
3 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of  
4 minimum and overtime wages due for all time worked.

5           7.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
6 defined as all persons who are or previously were employed by Defendant Manly Enterprises  
7 and/or Defendant Foreign Automotive and/or Defendant Manly Automotive Group in California  
8 and classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the  
9 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing  
10 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).  
11 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is  
12 under five million dollars (\$5,000,000.00).

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

24           9.     The true names and capacities, whether individual, corporate, subsidiary,  
25 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are  
26 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious  
27 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this  
28 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are

1 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief  
2 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
3 inclusive, are responsible in some manner for one or more of the events and happenings that  
4 proximately caused the injuries and damages hereinafter alleged.

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

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

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

24         13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,  
25 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain  
26 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

27         14. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
28 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and

1 other members of the CALIFORNIA CLASS who has been economically injured by  
2 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable  
3 relief.

#### 4 **JURISDICTION AND VENUE**

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

9 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
10 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ  
11 the CALIFORNIA CLASS across California, including in this County, and committed the  
12 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

#### 13 **THE CONDUCT**

14 17. In violation of the applicable sections of the California Labor Code and the  
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
16 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically  
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest  
19 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all  
20 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF  
21 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,  
22 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest  
23 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS  
24 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other  
25 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and  
26 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,  
27 among other things, all applicable hourly rates in effect during the pay periods and the  
28 corresponding amount of time worked at each hourly rate and/or failing to adhere to labor code

1 section 226(a)(1)-(9). DEFENDANTS' uniform policies and practices are intended to  
2 purposefully avoid the accurate and full payment for all time worked as required by California  
3 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over  
4 competitors who comply with the law. To the extent equitable tolling operates to toll claims by  
5 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted  
6 accordingly.

7 **A. Meal Period Violations**

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

22 19. From time to time during the CLASS PERIOD, as a result of their rigorous work  
23 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other  
24 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
25 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
26 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for  
27 more than five (5) hours during some shifts without receiving a meal break. Further,  
28 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a



1 second off-duty meal period for some workdays in which these employees are required by  
2 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by  
3 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and  
4 narrowly construed “on-duty” meal period exception. When they were provided with meal  
5 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,  
6 required to remain on duty and on call. DEFENDANTS’ failure to provide PLAINTIFF and the  
7 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by  
8 DEFENDANTS’ business records. As a result of their rigorous work schedules and  
9 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA  
10 CLASS therefore forfeit meal breaks without additional compensation and in accordance with  
11 DEFENDANTS’ strict corporate policy and practice.

12 **B. Rest Period Violations**

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

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1     **C. Unreimbursed Business Expenses**

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

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

25     **D. Wage Statement Violations**

26             23. California Labor Code Section 226 required an employer to furnish its employees  
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours  
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
2 name of the employee and only the last four digits of the employee's social security number or an  
3 employee identification number other than a social security number, (8) the name and address of  
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay  
5 period and the corresponding number of hours worked at each hourly rate by the employee.

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

14 25. Further, DEFENDANTS from time to time, provided PLAINTIFF and other  
15 CALIFORNIA CLASS Members with wage statements that failed to include all applicable rates  
16 and the corresponding number of hours worked at each hourly rate, in violation of Cal. Lab. Code  
17 § 226(a)(9).

18 26. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide  
19 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
20 Cal. Lab. Code § 226.

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

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

26 28. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
27 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
28 for all hours worked.

1           29. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
3 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to  
4 work while off-the-clock.

5           30. DEFENDANTS directed and directly benefited from the undercompensated off-  
6 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

7           31. DEFENDANTS controlled the work schedules, duties, and protocols, applications,  
8 assignments, and employment conditions of PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS.

10          32. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
13 wages earned and owed for all the work they performed.

14          33. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
15 exempt employees, subject to the requirements of the California Labor Code.

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

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

24          36. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
25 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and  
26 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and  
27 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
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1 hours worked in accordance with applicable law is evidenced by DEFENDANTS’ business  
2 records.

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

5 37. State law provides that employees must be paid overtime at one-and-one-half times  
6 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at  
7 an hourly rate plus commissions and/or non-discretionary incentive pay that was tied to specific  
8 elements of an employee’s performance and/or commissions.

9 38. DEFENDANTS’ non-discretionary commission and bonus program provided the  
10 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation  
11 when the employees met the various performance goals set by DEFENDANTS. However, when  
12 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA  
13 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,  
14 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or  
15 commission wages as part of the employees’ “regular rate of pay.”

16 39. Management and supervisors described the bonus and commissions programs and  
17 commission compensation program to potential and new employees as part of the compensation  
18 package. As a matter of law, the incentive and commission compensation received by  
19 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly  
20 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,  
21 meal and rest period premium payments, and sick pay. DEFENDANTS’ failure to do so has  
22 resulted in DEFENDANTS’ systematic underpayment of overtime and double time  
23 compensation, meal and rest period premium payments, and sick pay to PLAINTIFF and other  
24 CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that  
25 paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay  
26 for the workweek in which the employee uses paid sick time, whether or not the employee actually  
27 works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to  
28 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay

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

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

14 **G. Commission and Piece-Rate Violations**

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

27 42. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS  
28 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid

1 on a draw versus commission basis as exempt from overtime compensation. During the CLASS  
2 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the  
3 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet  
4 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-  
5 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw  
6 versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately  
7 classify them as non-exempt from overtime compensation.

#### 8 **H. Unlawful Deductions**

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

#### 13 **I. Timekeeping Manipulation**

14 44. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
15 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
16 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
17 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
18 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and  
19 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and  
20 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all  
21 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and  
22 missed rest breaks.

23 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
24 time-to-time, forfeited time worked by working without their time being accurately recorded and  
25 without compensation at the applicable pay rates.

26 46. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
28 timekeeping system so as to create the appearance that PLAINTIFF and other members of the

1 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
2 were not at all times provided an off-duty meal break. This practice is a direct result of  
3 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)  
4 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

5 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
6 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
7 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
8 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
9 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
10 records.

#### 11 **J. Unlawful Rounding Practices**

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

24 49. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
25 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
26 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
27 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to  
28



perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

**K. Violations for Untimely Payment of Wages**

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

51. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to Cal. Lab. Code § 202, if an employee 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.” PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

**L. Sick Pay Violations**

53. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave. As of January 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year.

1           54. California Labor Code Section 246(i) requires an employer to furnish its  
2 employees with written wage statements setting forth the amount of paid sick leave available.  
3 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
4 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
5 forth the amount of paid sick leave available.

6           **M. Failure to Provide Personnel Files**

7           55. On September 10, 2024, PLAINTIFF caused a written request via certified mail  
8 to be delivered to DEFENDANTS for PLAINTIFF'S personnel and employment records,  
9 including but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs;  
10 and (4) PLAINTIFF'S complete employment file.

11           56. DEFENDANTS failed to provide and/or make available to PLAINTIFF their  
12 personnel records, payroll records, employment contract, and entire employment file within thirty  
13 (30) days of their requests stated above. In fact, as of the date of filing of this complaint,  
14 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.  
15 DEFENDANTS violated California Labor Code Section 1198.5 by failing to respond and provide  
16 PLAINTIFF with their employment file within thirty (30) days. Section 1198.5 states that  
17 employees (and former employees) have the right to inspect personnel records maintained by the  
18 employer "related to the employee's performance or to any grievance concerning the employee."  
19 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF  
20 is now entitled to and requests injunctive relief to obtain compliance with California Labor Code  
21 Section 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this  
22 action.

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

1 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during  
2 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and  
3 rest breaks without additional compensation and in accordance with DEFENDANTS' strict  
4 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with  
5 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed  
6 to reimburse PLAINTIFF for required business expenses related to the personal expenses  
7 incurred for the use of his personal cell phone, personal computer, personal vehicle and home  
8 internet, on behalf of and in furtherance of his employment with DEFENDANTS. Additionally,  
9 DEFENDANTS failed to provide and/or make available to PLAINTIFF their personnel records,  
10 payroll records, employment contracts, and entire employment file within (30) days of all their  
11 request on September 10, 2024. To date, DEFENDANTS have not fully paid PLAINTIFF the  
12 minimum, overtime and double time compensation still owed to him or any penalty wages owed  
13 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually  
14 does not exceed the sum or value of \$75,000.

### 15 **CLASS ACTION ALLEGATIONS**

16 58. 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 Manly Enterprises  
18 and/or Defendant Foreign Automotive and/or Manly Automotive Group and classified as non-  
19 exempt, exempt, piece-rate based, and/or commission-based employees (the "CALIFORNIA  
20 CLASS") at any time during the period beginning four (4) years prior to the filing of this  
21 Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

22 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
23 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
24 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
25 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate  
26 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
27 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.  
28

1           60.     The members of the class are so numerous that joinder of all class members is  
2 impractical.

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

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

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

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

11           63. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
12 PLAINTIFF has the same interests as the other members of the class.

13           64. PLAINTIFF will fairly and adequately represent and protect the interests of the  
14 CALIFORNIA CLASS Members.

15           65. PLAINTIFF retained able class counsel with extensive experience in class action  
16 litigation.

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

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

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

26           69. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
28 since the damages suffered by individual members of the class may be relatively small, the

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

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

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

### 16 **FIRST CAUSE OF ACTION**

#### 17 **Unlawful Business Practices**

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

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

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

23 72. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or 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 money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

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

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

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

77. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANTS.

3 78. By the conduct alleged herein, DEFENDANTS' practices were also unfair and  
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide  
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 83. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
27 and do, seek such relief as may be necessary to restore to them the money and property which  
28 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the



1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
2 business practices, including earned but unpaid wages for all time worked.

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

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

## 14 **SECOND CAUSE OF ACTION**

### 15 **Failure To Pay Minimum Wages**

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

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

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

21 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
22 for DEFENDANTS' willful and intentional violations of the California Labor Code and the  
23 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate  
24 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

6           90. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and  
7 the other members of the CALIFORNIA CLASS without regard to the correct amount of time  
8 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully  
9 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of  
10 the CALIFORNIA CLASS.

11           91. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
13 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
14 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

21           93. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
23 minimum wage compensation for their time worked for DEFENDANTS.

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

27           95. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
3 to them, and which will be ascertained according to proof at trial.

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

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

19 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
20 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
21 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the  
22 California Labor Code and/or other applicable statutes. To the extent minimum wage  
23 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
24 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or  
25 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
26 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
27 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good  
28

1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
2 recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure To Pay Overtime Compensation**

5 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

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

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

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

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

24 104. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
25 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time  
26 they worked, including overtime work.

27 105. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of

1 implementing a uniform policy and practice that failed to accurately record overtime worked by  
2 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
4 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

12 107. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
13 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
14 overtime compensation for their time worked for DEFENDANTS.

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

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

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

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

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

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

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

25 114. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
26 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
27 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the  
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

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

#### 7 **FOURTH CAUSE OF ACTION**

##### 8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

11 115. 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.

14 116. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally  
15 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
16 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
17 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
18 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
19 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not  
20 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'  
21 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required  
22 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business  
23 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS  
24 Members with a second off-duty meal period in some workdays in which these employees were  
25 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other  
26 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
27 and in accordance with DEFENDANTS' strict corporate policy and practice.  
28

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

6 118. 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 **FIFTH CAUSE OF ACTION**

10 **Failure To Provide Required Rest Periods**

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

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

13 119. 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.

16 120. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
17 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
18 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
19 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
20 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
21 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
22 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
23 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
24 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
25 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to  
26 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as  
27 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to  
28



1 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid  
2 rest periods is evidenced by DEFENDANTS' business records.

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

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

### 11 **SIXTH CAUSE OF ACTION**

#### 12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

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

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

18 124. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment of  
23 overtime under subdivision (a) of Section 515 or any applicable order of the  
24 Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee  
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee  
28 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.

125. When DEFENDANTS 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, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS 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.

126. Further, DEFENDANTS from time to time, provided PLAINTIFF and other CALIFORNIA CLASS Members with wage statements that failed to include all applicable rates and the corresponding number of hours worked at each hourly rate, in violation of Cal. Lab. Code § 226(a)(9).

127. 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.

128. DEFENDANTS 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 recover  
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
8 of the CALIFORNIA CLASS herein).

## 9 **SEVENTH 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)**

13 129. 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.

16 130. 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.

24 131. 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."

27 132. 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

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.

133. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

134. 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.

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

136. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves 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 demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

### **EIGHTH CAUSE OF ACTION**

#### **Failure To Reimburse Employees for Required Expenses**

**(Cal. Lab. Code §§ 2802)**

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

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

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

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

139. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANTS’  
2 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS  
3 members for expenses which included, but were not limited to, the use of their personal cell  
4 phones, personal computers, personal vehicles and home internet, all on behalf of and for the  
5 benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS  
6 Members were required by DEFENDANTS to use their personal cell phones, personal  
7 computers, personal vehicles and home internet to execute their essential job duties on behalf of  
8 DEFENDANTS. DEFENDANTS’ uniform policy, practice and procedure was to not reimburse  
9 PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of  
10 their personal cell phones, personal computers, personal vehicles and home internet within the  
11 course and scope of their employment for DEFENDANTS. These expenses were necessary to  
12 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS’ conduct  
13 to assert any waiver of this expectation. Although these expenses were necessary expenses  
14 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to  
15 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these  
16 expenses as an employer is required to do under the laws and regulations of California.

17 140. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
18 by him and the CALIFORNIA CLASS members in the discharge of their job duties for  
19 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the  
20 statutory rate and costs under Cal. Lab. Code § 2802.

## 21 **NINTH CAUSE OF ACTION**

### 22 **Failure To Permit Inspection of Employee Records**

23 **(Cal. Lab. § 1198.5)**

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

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

1 142. Labor Code § 1198.5 states that employees (and former employees) have the right  
2 to inspect personnel records maintained by the employer “related to the employee’s performance  
3 or to any grievance concerning the employee.” Employers must allow inspection or copying  
4 within thirty (30) days of the request.

5 143. On September 10, 2024, PLAINTIFF caused a written request via certified mail  
6 to be delivered to DEFENDANTS for PLAINTIFF’S personnel and employment records,  
7 including but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs;  
8 and (4) PLAINTIFF’S complete employment file.

9 144. DEFENDANTS failed to provide and/or make available to PLAINTIFF their  
10 personnel records, payroll records, employment contract, and entire employment file within thirty  
11 (30) days of their requests stated above. In fact, as of the date of filing of this complaint,  
12 DEFENDANT has still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

13 145. PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance  
14 with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys’ fees and costs  
15 for bringing this action.

16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA CLASS:

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and  
4 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action  
5 pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory  
7 damages for overtime compensation due to PLAINTIFF and the other members of  
8 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest  
9 thereon at the statutory rate;
- 10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
11 the applicable IWC Wage Order;
- 12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
13 which a violation occurs and one hundred dollars (\$100) per each member of the  
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
15 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for  
16 violation of Cal. Lab. Code § 226
- 17 e. The wages of all terminated employees from the CALIFORNIA CLASS as a  
18 penalty from the due date thereof at the same rate until paid or until an action  
19 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 20 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA  
21 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

22 3. On the Ninth Cause of Action

- 23 a. For an award of statutory damages as plead pursuant to Labor Code § 1198.5
- 24 b. For an injunction compelling production of Plaintiff's employment records  
25 pursuant to Labor Code §1198.5.

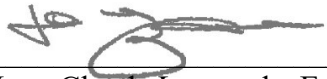
26 4. On all claims:

- 27 a. An award of interest, including prejudgment interest at the legal rate;
- 28 b. Such other and further relief as the Court deems just and equitable; and

1 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,  
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or  
3 § 1194.  
4

5 DATED: February 4, 2025

**JCL LAW FIRM, APC**

6 By:   
7 Jean-Claude Lapuyade, Esq.  
8 Attorney for PLAINTIFFS  
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**DEMAND FOR A JURY TRIAL**

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

DATED: February 4, 2025

**JCL LAW FIRM, APC**

By:   
Jean-Claude Lapuyade, Esq.  
Attorney for PLAINTIFFS