

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Monnett De La Torre (State Bar #272884)  
Andrea A. Amaya Silva (State Bar #348080)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619) 599-8292  
Facsimile: (619) 599-8291  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[mdelatorre@jcl-lawfirm.com](mailto:mdelatorre@jcl-lawfirm.com)  
[aamaya@jcl-lawfirm.com](mailto:aamaya@jcl-lawfirm.com)

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**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619)255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

DAVID BRATT, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

v.

MOSSY AUTOMOTIVE GROUP II, LLC, a California limited liability company; MOSSY AUTOMOTIVE GROUP EL CAJON INC., a California Corporation; MOSSY AUTOMOTIVE GROUP INSURANCE, LLC, a California limited liability company; MOSSY AUTOMOTIVE GROUP LEMON GROVE INC., a California corporation; MOSSY AUTOMOTIVE GROUP, INC., a California corporation; MOSSY AUTO IMPORTS, a California corporation; MOSSY CHEVROLET, INC., a California corporation; MOSSY COMPANY, INC., a California corporation; MOSSY EUROPEAN IMPORTS, INC., a California corporation; MOSSY FORD, INC., a California corporation;

Case No: 24CU002277C

**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;

1 MOSSY HOLDING COMPANY, INC., a  
2 Delaware corporation; MOSSY NISSAN  
3 CHULA VISTA, a California corporation;  
4 MOSSY NISSAN EL CAJON, a California  
5 corporation; MOSSY NISSAN ESCONDIDO,  
6 a California corporation; MOSSY NISSAN  
7 KEARNY MESA, a California corporation;  
8 MOSSY NISSAN NATIONAL CITY, a  
9 California corporation; MOSSY NISSAN  
10 OCEANSIDE, a California corporation;  
11 MOSSY NISSAN POWAY, a California  
12 corporation; MOSSY NISSAN, INC., a  
13 California corporation; MOSSY VEHICLE  
14 LEASING, INC., a California corporation;  
15 MAG WEST MOSSY CDJR III LP, a  
16 California limited partnership; MAG WEST  
17 MOSSY FORD II, LP, a California limited  
18 partnership; MAG WEST MOSSY HONDA II,  
19 LP, a California limited partnership; MAG  
20 WEST MOSSY NISSAN II, LP, a California  
21 limited partnership; MAG WEST MOSSY  
22 NISSAN III LP, a California limited  
23 partnership; MAG WEST MOSSY TOYOTA  
24 II, LP, a California limited partnership; MAG  
25 WEST MOSSY VOLKSWAGEN II, LP, a  
26 California limited partnership; MAG WEST  
27 MOSSY VOLKSWAGEN III LP, a California  
28 limited partnership; and DOES 1-50, Inclusive,

Defendants.

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

#### **DEMAND FOR A JURY TRIAL**

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

#### **PRELIMINARY ALLEGATIONS**

23 1. Defendant MOSSY AUTOMOTIVE GROUP II, LLC (“Defendant Mossy II”) is  
24 a California limited liability company that at all relevant times mentioned herein conducted and  
25 continues to conduct substantial and regular business throughout California.

26 2. Defendant MOSSY AUTOMOTIVE GROUP EL CAJON INC. (“Defendant  
27 Mossy El Cajon”) is a California corporation that at all relevant times mentioned herein conducted  
28 and continues to conduct substantial and regular business throughout California.

1           3.     Defendant MOSSY AUTOMOTIVE GROUP INSURANCE, LLC (“Defendant  
2 Mossy Insurance”) is a California limited liability company that at all relevant times mentioned  
3 herein conducted and continues to conduct substantial and regular business throughout California.

4           4.     MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (“Defendant Mossy  
5 Lemon Grove”) is a California corporation that at all relevant times mentioned herein conducted  
6 and continues to conduct substantial and regular business throughout California.

7           5.     Defendant MOSSY AUTOMOTIVE GROUP, INC. (“Defendant Mossy  
8 Automotive”) is a California corporation that at all relevant times mentioned herein conducted  
9 and continues to conduct substantial and regular business throughout California.

10          6.     Defendant MOSSY AUTO IMPORTS (“Defendant Mossy Imports”) is a  
11 California corporation that at all relevant times mentioned herein conducted and continues to  
12 conduct substantial and regular business throughout California.

13          7.     Defendant MOSSY CHEVROLET, INC. (“Defendant Mossy Chevy”) is a  
14 California corporation that at all relevant times mentioned herein conducted and continues to  
15 conduct substantial and regular business throughout California.

16          8.     Defendant MOSSY COMPANY, INC. (“Defendant Mossy Company”) is a  
17 California corporation that at all relevant times mentioned herein conducted and continues to  
18 conduct substantial and regular business throughout California.

19          9.     Defendant MOSSY EUROPEAN IMPORTS, INC. (“Defendant Mossy  
20 European”) is a California corporation that at all relevant times mentioned herein conducted and  
21 continues to conduct substantial and regular business throughout California.

22          10.    Defendant MOSSY FORD, INC. (“Defendant Mossy Ford”) is a California  
23 corporation that at all relevant times mentioned herein conducted and continues to conduct  
24 substantial and regular business throughout California.

25          11.    Defendant MOSSY HOLDING COMPANY, INC. (“Defendant Mossy Holding”)  
26 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to  
27 conduct substantial and regular business throughout California  
28

1           12. Defendant MOSSY NISSAN CHULA VISTA (“Defendant Mossy Chula Vista”)  
2 is a California corporation that at all relevant times mentioned herein conducted and continues to  
3 conduct substantial and regular business throughout California.

4           13. Defendant MOSSY NISSAN EL CAJON (“Defendant Mossy Nissan El Cajon”)  
5 is a California corporation that at all relevant times mentioned herein conducted and continues to  
6 conduct substantial and regular business throughout California.

7           14. Defendant MOSSY NISSAN ESCONDIDO (“Defendant Mossy Escondido”) is a  
8 California corporation that at all relevant times mentioned herein conducted and continues to  
9 conduct substantial and regular business throughout California.

10           15. Defendant MOSSY NISSAN KEARNY MESA (“Defendant Mossy Kearny  
11 Mesa”) is a California corporation that at all relevant times mentioned herein conducted and  
12 continues to conduct substantial and regular business throughout California.

13           16. Defendant MOSSY NISSAN NATIONAL CITY (“Defendant Mossy National  
14 City”) is a California corporation that at all relevant times mentioned herein conducted and  
15 continues to conduct substantial and regular business throughout California.

16           17. Defendant MOSSY NISSAN OCEANSIDE (“Defendant Mossy Oceanside”) is a  
17 California corporation that at all relevant times mentioned herein conducted and continues to  
18 conduct substantial and regular business throughout California.

19           18. Defendant MOSSY NISSAN POWAY (“Defendant Mossy Poway”) is a  
20 California corporation that at all relevant times mentioned herein conducted and continues to  
21 conduct substantial and regular business throughout California.

22           19. Defendant MOSSY NISSAN, INC. (“Defendant Mossy Nissan”) is a California  
23 corporation that at all relevant times mentioned herein conducted and continues to conduct  
24 substantial and regular business throughout California.

25           20. Defendant MOSSY VEHICLE LEASING, INC. (“Defendant Mossy Leasing”) is  
26 a California corporation that at all relevant times mentioned herein conducted and continues to  
27 conduct substantial and regular business throughout California.  
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1           21. Defendant MAG WEST MOSSY CDJR III LP (“Defendant MAG CDJR”) is a  
2 California limited partnership that at all relevant times mentioned herein conducted and continues  
3 to conduct substantial and regular business throughout California.

4           22. Defendant MAG WEST MOSSY FORD II, LP (“Defendant MAG Ford”) is a  
5 California limited partnership that at all relevant times mentioned herein conducted and continues  
6 to conduct substantial and regular business throughout California.

7           23. Defendant MAG WEST MOSSY HONDA II, LP (“Defendant MAG Honda”) is a  
8 California limited partnership that at all relevant times mentioned herein conducted and continues  
9 to conduct substantial and regular business throughout California.

10           24. Defendant MAG WEST MOSSY NISSAN II, LP (“Defendant MAG Nissan II”)  
11 is a California limited partnership that at all relevant times mentioned herein conducted and  
12 continues to conduct substantial and regular business throughout California.

13           25. Defendant MAG WEST MOSSY NISSAN III LP (“Defendant MAG Nissan III”)  
14 is a California limited partnership that at all relevant times mentioned herein conducted and  
15 continues to conduct substantial and regular business throughout California.

16           26. Defendant MAG WEST MOSSY TOYOTA II, LP (“Defendant MAG Toyota”) is  
17 a California limited partnership that at all relevant times mentioned herein conducted and  
18 continues to conduct substantial and regular business throughout California.

19           27. Defendant MAG WEST MOSSY VOLKSWAGEN II, LP (“Defendant MAG  
20 Volkswagen II”) is a California limited partnership that at all relevant times mentioned herein  
21 conducted and continues to conduct substantial and regular business throughout California.

22           28. Defendant MAG WEST MOSSY VOLKSWAGEN III LP (“Defendant MAG  
23 Volkswagen III”) is a California limited partnership that at all relevant times mentioned herein  
24 conducted and continues to conduct substantial and regular business throughout California.

25           29. DEFENDANT operates car dealerships in California, including in the county of  
26 San Diego, where PLAINTIFF worked.

27  
28

1           30. PLAINTIFF alleges there has existed a unity of interest and ownership between  
2 Defendants such that any individuality and separateness between the entities has ceased and all  
3 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

4           31. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers  
5 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest  
6 and ownership between Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy  
7 Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy  
8 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European,  
9 Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant  
10 Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant  
11 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan,  
12 Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG  
13 Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,  
14 Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III are therefore alter egos of  
15 each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an  
16 abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from  
17 liability for the wrongful acts committed by them.

18           32. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other  
19 for the following reasons:

- 20           a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)  
21 Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance,  
22 Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy  
23 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy  
24 European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy  
25 Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido,  
26 Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant  
27 Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy  
28 Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda,  
Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,  
Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have the

1 same officers and/or entity address and/or mailing address and/or Agent for  
2 Service of Process;

3 b. On information and belief Defendant Mossy II, Defendant Mossy El Cajon,  
4 Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy  
5 Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant  
6 Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant  
7 Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El  
8 Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant  
9 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant  
10 Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant  
11 MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG  
12 Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and  
13 Defendant MAG Volkswagen III utilize the same standardized employment forms  
14 and issue the same employment policies and same pay stubs;

15 c. On information and belief Defendant Mossy II, Defendant Mossy El Cajon,  
16 Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy  
17 Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant  
18 Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant  
19 Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El  
20 Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant  
21 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant  
22 Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant  
23 MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG  
24 Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and  
25 Defendant MAG Volkswagen III have an executive team which supervise and  
26 manage the operations of all of DEFENDANTS' dealerships, supervised and  
27 managed the finances of all of DEFENDANTS' dealerships, supervised and  
28 managed the marketing of all of DEFENDANTS' dealerships, supervised and  
managed the human resources of all of DEFENDANTS' dealerships, and

1 supervised and managed the food and beverage offerings at all of DEFENDANTS’  
2 dealerships.

3 33. PLAINTIFF alleges that DEFENDANTS’ various separate corporate entities are  
4 used by an individual or individuals, or by another corporation, to accomplish inequitable  
5 purposes, including to limit liability for the unlawful acts of DEFENDANT.

6 34. PLAINTIFF alleges that there is such a unity of interest and ownership between  
7 DEFENDANTS’ various corporate entities that own DEFENDANTS’ restaurants and the  
8 individual or individuals, or organization controlling those corporate entities that their separate  
9 personalities no longer exist.

10 35. PLAINTIFF further alleges that the failure to disregard the various corporate  
11 entities would promote injustice.

12 36. Defendant Mossy II, and/or Defendant Mossy El Cajon, and/or Defendant Mossy  
13 Insurance, and/or Defendant Mossy Lemon Grove, and/or Defendant Mossy Automotive, and/or  
14 Defendant Mossy Imports, and/or Defendant Mossy Chevy, and/or Defendant Mossy Company,  
15 and/or Defendant Mossy European, and/or Defendant Mossy Ford, and/or Defendant Mossy  
16 Holding, and/or Defendant Mossy Chula Vista, and/or Defendant Mossy Nissan El Cajon, and/or  
17 Defendant Mossy Escondido, and/or Defendant Mossy Kearny Mesa, Defendant Mossy National  
18 City, and/or Defendant Oceanside, and/or Defendant Mossy Poway, and/or Defendant Mossy  
19 Nissan, and/or Defendant Mossy Leasing, and/or Defendant MAG CDJR, and/or Defendant MAG  
20 Ford, and/or Defendant MAG Honda, and/or Defendant MAG Nissan II, and/or Defendant MAG  
21 Nissan III, and/or Defendant MAG Toyota, and/or Defendant MAG Volkswagen II, and/or  
22 Defendant MAG Volkswagen III were the joint employers of PLAINTIFF as evidenced by the  
23 contracts signed and by the company PLAINTIFF performed work for respectively, and therefore  
24 jointly responsible as employers for the conduct alleged herein and collectively referred to herein  
25 as “DEFENDANTS” or “DEFENDANT.”

26 37. PLAINTIFF has been employed by DEFENDANTS in California since January of  
27 2023 as a non-exempt employee, paid on an hourly basis, non-discretionary bonuses, and entitled  
28 to the legally required meal and rest periods and payment of minimum and overtime wages due  
for all time worked.



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

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

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

28

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

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

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

20           44.     DEFENDANTS' uniform policies and practices alleged herein were unlawful,  
21 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain  
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

23           45.     PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
24 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and  
25 other members of the CALIFORNIA CLASS who has been economically injured by  
26 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable  
27 relief.

28   **JURISDICTION AND VENUE**

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

5 47. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
6 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ  
7 the CALIFORNIA CLASS across California, including in this County, and committed the  
8 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

9 **THE CONDUCT**

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

1 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should  
2 be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

1 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,  
2 required to remain on duty and on call. Further, DEFENDANTS from time to time required  
3 PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication  
4 devices in order to receive and respond to work-related communications during what was  
5 supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and  
6 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by  
7 DEFENDANTS' business records. As a result of their rigorous work schedules and  
8 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA  
9 CLASS therefore forfeit meal breaks without additional compensation and in accordance with  
10 DEFENDANTS' strict corporate policy and practice.

11 **B. Rest Period Violations**

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

1     **C. Unreimbursed Business Expenses**

2             52. 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             53. 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, vehicles, computers, and internet connection as a result of and in furtherance of their  
16 job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required  
17 to use their personal cell phones, vehicles, computers, and internet connection in order to perform  
18 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and  
19 other CALIFORNIA CLASS Members for the use of their personal cell phones, vehicles,  
20 computers, and internet connection. As a result, in the course of their employment with  
21 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred  
22 unreimbursed business expenses that included, but were not limited to, costs related to the use of  
23 their personal cell phones, vehicles, computers, and internet connection, all on behalf of and for  
24 the benefit of DEFENDANT.

25     **D. Wage Statement Violations**

26             54. 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 55. 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 56. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the  
15 CALIFORNIA CLASS with wage statements that provide all applicable hourly rates in effect  
16 during the pay period and the corresponding number of hours worked at each hourly rate by the  
17 employee, in violation of Cal. Lab. Code § 226(a)(9).

18 57. 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 58. 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 59. 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           60. 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, including but not limited to time spent locking all vehicles on DEFENDANTS' premises.  
4 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work  
5 while off-the-clock.

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

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

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

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

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

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

25           67. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
26 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and  
27 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and  
28 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all



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

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

18 70. DEFENDANTS’ non-discretionary commission and bonus program provided the  
19 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation  
20 when the employees met the various performance goals set by DEFENDANT. However, when  
21 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA  
22 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,  
23 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or  
24 commission wages as part of the employees’ “regular rate of pay.”

25 71. Management and supervisors described the bonus and commissions programs and  
26 commission compensation program to potential and new employees as part of the compensation  
27 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA  
28 CLASS. As a matter of law, the incentive and commission compensation received by

1 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly  
2 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,  
3 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has  
4 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,  
5 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA  
6 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time  
7 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
8 workweek in which the employee uses paid sick time, whether or not the employee actually works  
9 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include  
10 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay  
11 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable  
12 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

25           73. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
26 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those  
27 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission  
28 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be

1 separately compensated for all non-productive time at an hourly rate that is no less than the  
2 applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and the  
3 CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis,  
4 DEFENDANT failed to separately compensate PLAINTIFF and the CALIFORNIA CLASS for  
5 all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is  
6 no less than the applicable minimum wage. As a result, PLAINTIFF and the CALIFORNIA  
7 CLASS forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately  
8 compensate their non-productive time at an hourly rate that is no less than the applicable  
9 minimum wage.

10 74. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS  
11 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid  
12 on a draw versus commission basis as exempt from overtime compensation. During the CLASS  
13 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the  
14 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet  
15 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th  
16 252-254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on  
17 a draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to  
18 accurately classify them as non-exempt from overtime compensation.

19 **H. Unlawful Deductions**

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

24 **I. Timekeeping Manipulation**

25 76. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
26 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
27 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
28 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal

1 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and  
2 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and  
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all  
4 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and  
5 missed rest breaks.

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

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

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

## 22 **J. Unlawful Rounding Practices**

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

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

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

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

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

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

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

4     **L. Sick Pay Violations**

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

12           86.     California Labor Code Section 246(i) requires an employer to furnish its  
13 employees with written wage statements setting forth the amount of paid sick leave available.  
14 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
15 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
16 forth the amount of paid sick leave available

17           87.     Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
18 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
19 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)  
20 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
21 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
22 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided  
23 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the  
24 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during  
25 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and  
26 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict  
27 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with  
28 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed

1 to reimburse PLAINTIFF for required business expenses related to the personal expenses  
2 incurred for the use of their personal cell phone, vehicle, computer and home internet, on behalf  
3 of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have  
4 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
5 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy  
6 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

### 7 CLASS ACTION ALLEGATIONS

8 88. PLAINTIFF brings this Class Action on behalf of himself, and a California class  
9 defined as all persons who are or previously were employed by DEFENDANT in California and  
10 classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the  
11 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the  
12 filing of this Complaint and ending on the date as determined by the Court (the “CLASS  
13 PERIOD”).

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

20 90. The members of the class are so numerous that joinder of all class members is  
21 impractical.

22 91. Common questions of law and fact regarding DEFENDANTS’ conduct, including  
23 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately  
24 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
25 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
26 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide  
27 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum  
28 wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact  
2 common to the class are:

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

27 92. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
28 a result of DEFENDANTS' conduct and actions alleged herein.



1           93. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
2 PLAINTIFF has the same interests as the other members of the class.

3           94. PLAINTIFF will fairly and adequately represent and protect the interests of the  
4 CALIFORNIA CLASS Members.

5           95. PLAINTIFF retained able class counsel with extensive experience in class action  
6 litigation.

7           96. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
8 interest of the other CALIFORNIA CLASS Members.

9           97. There is a strong community of interest among PLAINTIFF and the members of  
10 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are  
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
12 sustained.

13           98. The questions of law and fact common to the CALIFORNIA CLASS Members  
14 predominate over any questions affecting only individual members, including legal and factual  
15 issues relating to liability and damages.

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

24           a. Inconsistent or varying adjudications with respect to individual members of the  
25 CALIFORNIA CLASS which would establish incompatible standards of conduct  
26 for the parties opposing the CALIFORNIA CLASS; and/or,

27           b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their  
2 ability to protect their interests.

3 100. Class treatment provides manageable judicial treatment calculated to bring an  
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

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

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

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

13 102. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
14 Code § 17021.

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

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

26 104. By the conduct alleged herein, DEFENDANTS have engaged and continue to  
27 engage in a business practice which violates California law, including but not limited to, the  
28 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.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

18 107. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
19 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the  
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
21 DEFENDANTS.

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

26 109. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
2 hours of work.

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

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

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

17 113. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
18 and do, seek such relief as may be necessary to restore to them the money and property which  
19 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
21 business practices, including earned but unpaid wages for all time worked.

22 114. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from  
25 engaging in any unlawful and unfair business practices in the future.

26 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy  
27 and/or adequate remedy at law that will end the unlawful and unfair business practices of  
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these  
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

9 115. 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.

12 116. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
13 for DEFENDANT's willful and intentional violations of the California Labor Code and the  
14 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate  
15 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

18 118. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
20 the minimum so fixed is unlawful.

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

23 120. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and  
24 the other members of the CALIFORNIA CLASS without regard to the correct amount of time  
25 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully  
26 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of  
27 the CALIFORNIA CLASS.

28

1           21. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

5           122. In committing these violations of the California Labor Code, DEFENDANTS  
6 inaccurately calculated the correct time worked and consequently underpaid the actual time  
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted  
8 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
9 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
10 laws and regulations.

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

14           124. During the CLASS PERIOD, PLAINTIFF and the other members of the  
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a  
16 failure to pay all earned wages.

17           125. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
20 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
21 to them, and which will be ascertained according to proof at trial.

22           126. DEFENDANTS knew or should have known that PLAINTIFF and the other  
23 members of the CALIFORNIA CLASS were under-compensated for their time worked.  
24 DEFENDANTS systematically elected, either through intentional malfeasance or gross  
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
26 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
27 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
28 for their time worked.

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

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

20   **THIRD CAUSE OF ACTION**

21   **Failure To Pay Overtime Compensation**

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

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

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

27           130. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
28 for DEFENDANTS’ willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees  
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,  
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

13 134. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
14 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time  
15 they worked, including overtime work.

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

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



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

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

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

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

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

27           142. DEFENDANTS knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

6 143. 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, DEFENDANTS acted and continue to act  
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS with a conscious of 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 legal  
12 rights, and otherwise causing them injury in order to increase company profits at the expense of  
13 these employees.

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

24 **FOURTH CAUSE OF ACTION**

25 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

26 **FIFTH CAUSE OF ACTION**

27 **Failure To Provide Required Rest Periods**

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

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

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **Failure To Provide Accurate Itemized Statements**

3 **(Cal. Lab. Code § 226)**

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

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

8 154. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
9 “accurate itemized” statement in writing showing:

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

1 155. When DEFENDANTS did not accurately record PLAINTIFF'S and other  
2 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed  
3 meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated  
4 Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other  
5 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to  
6 show, among other things, all deductions, the accurate gross wages earned, net wages earned, the  
7 total hours worked and all applicable hourly rates in effect during the pay period and the  
8 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty  
9 payments or missed meal and rest periods.

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

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

24 **SEVENTH CAUSE OF ACTION**

25 **Failure To Pay Wages When Due**

26 **(Cal. Lab. Code § 203)**

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

28

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

4           159. Cal. Lab. Code § 200 provides that:

5                   As used in this article:

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

12           160. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
13 an employee, the wages earned and unpaid at the time of discharge are due and payable  
14 immediately."

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

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

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

27           163. Cal. Lab. Code § 203 provides:

28 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.

          164. 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.

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

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

13 167. Cal. Lab. Code § 2802 provides, in relevant part, that:  
14 An employer shall indemnify his or her employee for all necessary expenditures or  
15 losses incurred by the employee in direct consequence of the discharge of his or her  
16 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.

17 168. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.  
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
19 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'  
20 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS  
21 members for expenses which included, but were not limited to, the use of their personal cell  
22 phones, vehicles, computers, and internet connection all on behalf of and for the benefit of  
23 DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were  
24 required by DEFENDANTS to use their personal cell phones, vehicles, computers, and internet  
25 connection on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and  
26 procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for  
27 expenses resulting from the use of their personal cell phones, vehicles, computers, and internet  
28 connection within the course and scope of their employment for DEFENDANTS. These



1 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by  
2 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were  
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,  
4 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
5 members for these expenses as an employer is required to do under the laws and regulations of  
6 California.

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

### 11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for a judgment against Defendant as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

24 2. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
26 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
27 to Cal. Code of Civ. Proc. § 382;  
28 b. Compensatory damages, according to proof at trial, including compensatory

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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 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, § 246 and/or § 1194.

DATED: July 22, 2024

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay, Esq.  
Attorney for PLAINTIFF

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**DEMAND FOR A JURY TRIAL**

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

DATED: July 22, 2024

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By: \_\_\_\_\_  
Shani O. Zakay, Esq.  
Attorney for PLAINTIFF