

**SUMMONS
(CITACION JUDICIAL)**

Issued and Filed **SUM-100**

Superior Court of California
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

Sacramento

09/25/2023

houstoj

By _____, Deputy
23CV008944

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

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation; and DOES 1-50, Inclusive,

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

DORIAN OGANS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Sacramento Superior Court
Gordon D. Schaber Courthouse - 720 9th Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **SEP 23 2023** Clerk, by **J. HOUSTON**, Deputy
(Fecha) (Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

Filed
Superior Court of California,
Sacramento
09/20/2023
houstoj
By _____, Deputy
23CV008944

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19 Attorneys for PLAINTIFF

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

21 **IN AND FOR THE COUNTY OF SACRAMENTO**

22 DORIAN OGANS, an individual, on behalf of
23 himself, and on behalf of all persons similarly
24 situated,

25 Plaintiffs,

26 v.

27 PACIFIC GAS AND ELECTRIC COMPANY,
28 a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

Via Fax

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

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant PACIFIC GAS AND ELECTRIC COMPANY (“DEFENDANT and/or DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates a gas and electricity utility company throughout the state of California, including in the county of Sacramento, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from December of 2014 to September of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

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

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

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

27 8. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
28 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or

1 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
3 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
4 at all relevant times.

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

10 10. DEFENDANT’S uniform policies and practices alleged herein were unlawful,
11 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
12 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

13 11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
14 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
15 other members of the CALIFORNIA CLASS who has been economically injured by
16 DEFENDANT’S past and current unlawful conduct, and all other appropriate legal and equitable
17 relief.

18 **JURISDICTION AND VENUE**

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

23 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
25 the CALIFORNIA CLASS across California, including in this County, and committed the
26 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

27
28 ///

THE CONDUCT

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

21 **A. Meal Period Violations**

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

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

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

25 **B. Rest Period Violations**

26 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work requirements and

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

12 **C. Wage Statement Violations**

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

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

1 20. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

4 21. As a result, DEFENDANT issued PLAINTIFF and other members of the
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
6 DEFENDANT’s violations are knowing and intentional, were not isolated due to an unintentional
7 payroll error due to clerical or inadvertent mistake.

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

9 22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, off the clock COVID screenings. This resulted in PLAINTIFF
15 and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

16 24. DEFENDANT directed and directly benefited from the undercompensated off-the-
17 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

18 25. DEFENDANT controlled the work schedules, duties, and protocols, applications,
19 assignments, and employment conditions of PLAINTIFF and the other members of the
20 CALIFORNIA CLASS.

21 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
22 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
23 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
24 wages earned and owed for all the work they performed.

25 27. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
26 exempt employees, subject to the requirements of the California Labor Code.

27 28. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
28 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed

1 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
2 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
3 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
4 pay.

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

7 30. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
8 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
9 benefit for the time spent working while off-the-clock, including but not limited to, time spent
10 during COVID screenings. DEFENDANT's uniform policy and practice to not pay PLAINTIFF
11 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
12 applicable law is evidenced by DEFENDANT's business records.

13 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
14 **and Redeemed Sick Pay**

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

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

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

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

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

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

8 **F. Unreimbursed Business Expenses**

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

20 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
21 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
22 phones and personal home internet. Specifically, PLAINTIFF and other CALIFORNIA CLASS
23 Members were required to use their personal cell phones and personal home internet. However,
24 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
25 Members for the personal expenses incurred for the use of their personal cell phones and personal
26 home internet. As a result, in the course of their employment with DEFENDANT, the
27 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
28 expenses that included, but were not limited to, costs related to the use of their personal cell

1 phones and personal home internet, all on behalf of and for the benefit of DEFENDANT.

2 **G. Unlawful Rounding Practices**

3 38. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
4 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
5 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
6 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
7 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
8 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
9 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
10 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
11 these employees for all their time worked, including the applicable overtime compensation for
12 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
13 time to time, forfeited compensation for their time worked by working without their time being
14 accurately recorded and without compensation at the applicable overtime rates.

15 39. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
16 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
17 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
18 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
19 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
20 receiving an off-duty meal break.

21 **H. Timekeeping Manipulation**

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

27 41. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
28 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other

1 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
2 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
3 rest break.

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

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

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

20 **I. Violations for Untimely Payment of Wages**

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

26 46. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
27 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to
28 Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become

1 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
2 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
3 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
4 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
5 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

9 **J. Sick Pay Violations**

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

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

22 **K. Unlawful Deductions**

23 50. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
24 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
25 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
26 DEFENDANTS violated Labor Code § 221.

27 51. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
28 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
4 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
5 with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the
6 rest break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call and on-duty
7 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
8 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
9 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
10 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
11 PLAINTIFF for required business expenses related to the use of his personal cell phone and
12 personal home internet, in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not
13 fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to him
14 or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
15 PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

9 56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANT’s conduct and actions alleged herein.

11 57. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
12 PLAINTIFF have the same interests as the other members of the class.

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

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

17 60. Further, PLAINTIFF’S interests are coincident with, and not antagonistic to, the
18 interest of the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

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

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

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

8 68. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
11 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
12 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
13 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
14 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 94. 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 95. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
9 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
10 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
11 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

22 99. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
24 they worked, including overtime work.

25 100. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

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

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

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

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

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

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

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

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

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

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

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

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

9 110. 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.

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

26 112. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 114. 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.

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

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

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

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Pay Wages When Due**

9 **(Cal. Lab. Code § 203)**

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

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

14 119. Cal. Lab. Code § 200 provides that:

15 As used in this article:

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

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

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

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

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

3 123. Cal. Lab. Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance with
5 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
6 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.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

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

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

25 a. Gross wages earned,

26 b. (2) total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28

- 1 overtime under subdivision (a) of Section 515 or any applicable order of the
- 2 Industrial Welfare Commission,
- 3 c. the number of piece-rate units earned and any applicable piece rate if the employee
- 4 is paid on a piece-rate basis,
- 5 d. all deductions, provided that all deductions made on written orders of the employee
- 6 may be aggregated and shown as one item,
- 7 e. net wages earned,
- 8 f. the inclusive dates of the period for which the employee is paid,
- 9 g. the name of the employee and his or her social security number, except that by
- 10 January 1, 2008, only the last four digits of his or her social security number of an
- 11 employee identification number other than social security number may be shown
- 12 on the itemized statement,
- 13 h. the name and address of the legal entity that is the employer, and
- 14 i. all applicable hourly rates in effect during the pay period and the corresponding
- 15 number of hours worked at each hourly rate by the employee.

16 128. When DEFENDANT did not accurately record PLAINTIFF'S and other
17 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
18 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
19 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
20 CLASS Members with complete and accurate wage statements which failed to show, among other
21 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
22 and all applicable hourly rates in effect during the pay period and the corresponding amount of
23 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and
24 rest periods.

25 129. In addition to the foregoing, DEFENDANT failed to provide itemized wage
26 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
27 requirements of California Labor Code Section 226.

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

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

16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

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

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PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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


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

DATED: September 20, 2023

JCL LAW FIRM, APC

By: 

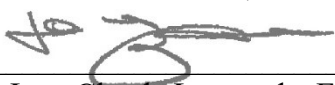
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 20, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF