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19 Attorneys for PLAINTIFF

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

22 ANDREW ELLENBERG-WILEY, an
23 individual, on behalf of himself, and on behalf
24 of all persons similarly situated,

25 Plaintiffs,

26 v.

27 SAN FRANCISCO AIDS FOUNDATION, a
28 California nonprofit 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;

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

09/13/2023
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

CGC-23-609040

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

PRELIMINARY ALLEGATIONS

1. Defendant SAN FRANCISCO AIDS FOUNDATION (“DEFENDANT” and/or “DEFENDANTS”) is a California nonprofit corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates sexual health clinics throughout the state of California, including in the county of San Francisco, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from September 2021 to October 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).

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

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

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

THE CONDUCT

1
2 14. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
4 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF 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, time spent time spent receiving and/or responding to work-
15 related communications and undergoing pre-shift Covid-19 health screenings. This resulted in
16 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-
17 clock.

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

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

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

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

1 28. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANT’s policies and practices also deprived them of overtime
6 pay.

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

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

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

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

27 32. State law provides that employees must be paid overtime at one-and-one-half times
28 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

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

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

27 35. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

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

10 **F. Unreimbursed Business Expenses**

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

22 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
23 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
24 phones and personal vehicles as a result of and in furtherance of their job duties. Specifically,
25 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their own cell
26 phones and personal vehicles in order to perform work related tasks. However, DEFENDANT
27 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
28 personal expenses incurred for the use of their personal cell phones and personal vehicles. As a

1 result, in the course of their employment with DEFENDANT, the PLAINTIFF and other
2 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
3 were not limited to, costs related to the use of their personal cell phones and personal vehicles, all
4 on behalf of and for the benefit of DEFENDANT.

5 **G. Unlawful Rounding Practices**

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

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

24 **H. Timekeeping Manipulation**

25 40. 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.

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

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

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

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

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

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

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

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

12 **J. Sick Pay Violations**

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

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

25 **K. Unlawful Deductions**

26 50. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
27 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
28

1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
2 DEFENDANTS violated Labor Code § 221.

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

20 **CLASS ACTION ALLEGATIONS**

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

26 53. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
27 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
28 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

1 illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide
2 accurate itemized wage statements, failed to reimburse for business expenses, failure to maintain
3 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

4 54. The members of the class are so numerous that joinder of all class members is
5 impractical.

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

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

- 1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;
- 4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;
- 9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.
- 12 56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.
- 14 57. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
15 PLAINTIFF have the same interests as the other members of the class.
- 16 58. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.
- 18 59. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.
- 20 60. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.
- 22 61. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.
- 26 62. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

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

12 68. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
16 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
17 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
18 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

23 76. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

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

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

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

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

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

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

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

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

21 93. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
22 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

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

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

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

16 96. 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 97. Cal. Lab. Code § 510 provides that employees in California shall not be employed
19 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
20 they receive additional compensation beyond their regular wages in amounts specified by law.

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

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

28

1 100. DEFENDANT’s 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 failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

25 104. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
27 a failure to pay all earned wages.
28

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

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

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

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

28

1 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
2 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
3 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

12 **FIFTH CAUSE OF ACTION**

13 **Failure To Provide Required Rest Periods**

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

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

16 114. 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.

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

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

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

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

13 **SIXTH CAUSE OF ACTION**

14 **Failure To Pay Wages When Due**

15 **(Cal. Lab. Code § 203)**

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

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

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

21 As used in this article:

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

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

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

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

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

1 rest periods. Further, DEFENDANT from time to time failed to provide PLAINTIFF and other
2 CALIFORNIA CLASS Members with wage statements that provided the correct name and
3 address of the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

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

7 130. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
8 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. These damages include, but are not limited to, costs expended calculating the correct
10 wages for all missed meal and rest breaks and the amount of employment taxes which were not
11 properly paid to state and federal tax authorities. These damages are difficult to estimate.
12 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
13 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
14 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
15 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
16 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
17 of the CALIFORNIA CLASS herein).

18 **EIGHTH CAUSE OF ACTION**

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

20 **(Cal. Lab. Code §§ 2802)**

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

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

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

26 An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her
28 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.

- 1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 2 c. An order requiring DEFENDANT to pay all overtime wages and all sums
- 3 unlawfully withheld from compensation due to PLAINTIFF and the other members
- 4 of the CALIFORNIA CLASS; and
- 5 d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund
- 6 for restitution of the sums incidental to DEFENDANT’s violations due to
- 7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 8 2. On behalf of the CALIFORNIA CLASS:
- 9 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 10 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
- 11 to Cal. Code of Civ. Proc. § 382;
- 12 b. Compensatory damages, according to proof at trial, including compensatory
- 13 damages for overtime compensation due to PLAINTIFF and the other members of
- 14 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
- 15 thereon at the statutory rate;
- 16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 17 the applicable IWC Wage Order;
- 18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 19 which a violation occurs and one hundred dollars (\$100) per each member of the
- 20 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
- 21 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
- 22 violation of Cal. Lab. Code § 226
- 23 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
- 24 penalty from the due date thereof at the same rate until paid or until an action
- 25 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 26 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 27 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: September 13, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 13, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay

Attorney for PLAINTIFF