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8 on behalf of all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF FRESNO**

11 ABDON ELIZONDO III, an individual and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15
16 MAXCO SUPPLY, INC., a California
17 Corporation; and DOES 1 through 100,
18 inclusive,

19 Defendants.

CASE NO.: [24CECG02567](#)

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
and
10. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

1 Plaintiff ABDON ELIZONDO III, on behalf of Plaintiff and all others similarly situated,
2 alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against Maxco
6 Supply, Inc., and any of its respective subsidiaries or affiliated companies within the State of
7 California (“MAXCO” and collectively, with DOES 1 through 100, as further defined below,
8 “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California
9 employees employed by or formerly employed by Defendants (“Class Members”).

10 **PARTIES**

11 **A. Plaintiff**

12 2. Plaintiff ABDON ELIZONDO III is a resident of the State of California. At all
13 relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
15 machine operation. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff
16 ABDON ELIZONDO III worked for Defendants from approximately April of 2022 through
17 approximately January of 2024.

18 **B. Defendants**

19 3. Plaintiff is informed and believes and based thereon alleges that defendant MAXCO
20 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
21 the laws of the State of California and doing business in the County of Fresno, State of California. At
22 all relevant times herein, MAXCO employed Plaintiff and similarly situated employees within the
23 State of California.

24 4. The true names and capacities, whether individual, corporate, associate, or otherwise,
25 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who
26 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
27 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
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1 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
2 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
3 defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed
4 and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this
5 action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all
6 respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.
7 Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include MAXCO,
8 and any of their parent, subsidiary, or affiliated companies within the State of California, as well as
9 DOES 1 through 100 identified herein.

10 **JOINT LIABILITY ALLEGATIONS**

11 5. Plaintiff is informed and believes and based thereon alleges that all the times
12 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
13 representative, joint venture or co-conspirator of each of the other defendants, either actually or
14 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
15 employment, joint venture, and conspiracy.

16 6. All of the acts and conduct described herein of each and every corporate defendant was
17 duly authorized, ordered, and directed by the respective and collective defendant corporate employers,
18 and the officers and management-level employees of said corporate employers. In addition thereto,
19 said corporate employers participated in the aforementioned acts and conduct of their said employees,
20 agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct
21 of said corporate employees, agents, and representatives, the defendant corporation respectively and
22 collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise
23 approved of each and all of the said acts and conduct of the aforementioned corporate employees,
24 agents and representatives.

25 7. Plaintiff is further informed and believes and based thereon alleges that DOES 51
26 through 100 violated, or caused to be violated, the above-referenced and below-referenced Labor
27 Code provisions in violation of Labor Code section 558.1.

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1 8. Plaintiff is informed and believes, and based thereon allege, that there exists such a
2 unity of interest and ownership between Defendants, and each of them, that their individuality and
3 separateness have ceased to exist.

4 9. Plaintiff is informed and believes, and based thereon alleges that despite the formation
5 of the purported corporate existence of MAXCO, and DOES 1 through 50, inclusive (the “Alter Ego
6 Defendants”), they, and each of them, are one and the same with DOES 51 through 100 (“Individual
7 Defendants”), and each of them, due to, but not limited to, the following reasons:

8 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
9 Defendants who personally committed the wrongful and illegal acts and violated the
10 laws as set forth in this Complaint, and who has hidden and currently hide behind the
11 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
12 other wrongful or inequitable purpose;

13 B. The Individual Defendants derive actual and significant monetary benefits by and
14 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
15 Defendants as the funding source for the Individual Defendants’ own personal
16 expenditures;

17 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
18 and the Alter Ego Defendants, while really one and the same, were segregated to appear
19 as though separate and distinct for purposes of perpetrating a fraud, circumventing a
20 statute, or accomplishing some other wrongful or inequitable purpose;

21 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
22 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
23 mentioned herein were, so mixed and intermingled that the same cannot reasonably be
24 segregated, and the same are inextricable confusion. The Alter Ego Defendants are,
25 and at all relevant times mentioned herein were, used by the Individual Defendants as
26 mere shells and conduits for the conduct of certain of their, and each of their
27 affairs. The Alter Ego Defendants are, and at all relevant times mentioned herein were,
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1 the alter egos of the Individual Defendants;

2 E. The recognition of the separate existence of the Individual Defendants and the Alter
3 Ego Defendants would promote injustice insofar that it would permit defendants to
4 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
5 Code, and other statutory violations. The corporate existence of these defendants
6 should thus be disregarded in equity and for the ends of justice because such disregard
7 is necessary to avoid fraud and injustice to Plaintiff herein;

8 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
9 Defendants (and vice versa), and the fiction of their separate corporate existence must
10 be disregarded;

11 10. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
12 thereon alleges that Defendants, and each of them, are joint employers.

13 **JURISDICTION**

14 11. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of
15 Civil Procedure section 410.10.

16 12. Venue is proper in Fresno County, California pursuant to Code of Civil Procedure
17 sections 392, et seq. because, among other things, Fresno County is where the causes of action
18 complained of herein arose; the county in which the employment relationship began; the county in
19 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
20 due to be performed; the county in which the employment contract, or part of it, between Plaintiff and
21 Defendants was actually performed; and the county in which Defendants, or some of them, reside.
22 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in
23 Fresno County, and because Defendants employ numerous Class Members in Fresno County.

24 13. **FACTUAL BACKGROUND**

25 14. For at least four (4) years prior to the filing of this action and continuing to the present,
26 Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of
27 them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff
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1 and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven
2 consecutive work days in a work week without being properly compensated for hours worked in
3 excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
4 worked on the seventh consecutive work day in a work week by, among other things, failing to
5 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;
6 engaging, suffering, or permitting employees to work off the clock, including, without limitation, by
7 requiring Plaintiff and Class Members: to come early to work and leave late work without being able
8 to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to
9 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
10 meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or
11 safety equipment off the clock, to attend company meetings off the clock, to make phone calls off the
12 clock, to drive off the clock, and/or go through security screenings and/or temperature checks off the
13 clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive
14 pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular
15 rate of pay for the pay periods where overtime was worked and the additional compensation was
16 earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time
17 entries, editing and/or manipulation of time entries; and by attempting but failing to properly
18 implement an alternative workweek schedule ("AWS") (including, without limitation, by failing to
19 implement a written agreement designating the regularly scheduled alternative workweek in which
20 the specified number of work days and work hours are regularly recurring; failing to adopt the AWS
21 in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the
22 affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any
23 AWS election; and/or failing to register an AWS election with the State of California, as required by
24 Labor Code section 511 and applicable Wage Orders) to the detriment of Plaintiff and Class Members.

25 15. For at least four (4) years prior to the filing of this Action and continuing to the present,
26 Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of
27 them, in violation of California state wage and hour laws as a result of, among other things, at times,
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1 failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is
2 above the minimum wage; engaging, suffering, or permitting employees to work off the clock,
3 including, without limitation, by requiring Plaintiff and Class Members: to come early to work and
4 leave late work without being able to clock in for all that time, to suffer under Defendants' control
5 due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks
6 after clocking out, to clock out for meal periods and continue working, to clock out for rest periods,
7 to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
8 clock, to make phone calls off the clock; to drive off the clock; detrimental rounding of employee time
9 entries; editing and/or manipulation of time entries to show less hours than actually worked; failing
10 to pay split shift premiums; and failing to pay reporting time pay to the detriment of Plaintiff and
11 Class Members.

12 16. For at least four (4) years prior to the filing of this Action and continuing to the present,
13 Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them, full, timely
14 thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours
15 in a work day and a second thirty (30) minute uninterrupted meal period for days on which they
16 worked in excess of ten (10) hours in a work day, and failing to provide compensation for such
17 unprovided meal periods as required by California wage and hour laws.

18 17. For at least four (4) years prior to the filing of this action and continuing to the present,
19 Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or some of
20 them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
21 thereof and failed to provide compensation for such unprovided rest periods as required by California
22 wage and hour laws.

23 18. For at least three (3) years prior to the filing of this action and continuing to the present,
24 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount
25 of their wages owed to them upon termination and/or resignation as required by Labor Code sections
26 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages,
27 premium wages, and vacation pay pursuant to Labor Code section 227.3.

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1 19. For at least one (1) year prior to the filing of this Action and continuing to the present,
2 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
3 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
4 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate; and other such information as required by Labor Code section 226,
6 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an
7 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

8 20. For at least one (1) year prior to the filing of this action and continuing to the present,
9 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount
10 of their wages for labor performed in a timely fashion as required under Labor Code section 204.

11 21. For at least three (3) years prior to the filing of this action and continuing to the present,
12 Defendants have, at times, failed to indemnify Class Members, or some of them, for the costs incurred
13 in using cellular phones for work-related purposes.

14 22. For at least four (4) years prior to the filing of this action and continuing to the present,
15 Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
16 employees or former employees within the State of California with compensation at their final rate of
17 pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

18 23. For at least four (4) years prior to the filing of this action and continuing to the present,
19 Defendants have had a consistent policy of failing to provide Plaintiffs and similarly situated
20 employees or former employees within the State of California with the rights provided to them under
21 the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.*

22 24. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
23 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
24 227.3, 245, *et seq.*, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of Regulations,
25 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
26 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
27 penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the proper
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1 rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

2 25. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
3 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
4 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
5 appropriate and effective means to prevent further violations, as well as all monies owed but withheld
6 and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution
7 of amounts owed.

8 **CLASS ACTION ALLEGATIONS**

9 26. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
10 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and
11 former non-exempt employees of Defendants within the State of California at any time commencing
12 four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class
13 action is provided to the class (collectively referred to as "Class Members").

14 27. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
15 to amend or modify the class description with greater specificity, further divide the defined class into
16 subclasses, and to further specify or limit the issues for which certification is sought.

17 28. This action has been brought and may properly be maintained as a class action under
18 the provisions of Code of Civil Procedure section 382 because there is a well-defined community of
19 interest in the litigation and the proposed Class is easily ascertainable.

20 **A. Numerosity**

21 29. The potential Class Members as defined are so numerous that joinder of all the
22 members of the Class is impracticable. While the precise number of Class Members has not been
23 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class Members
24 employed by Defendants within the State of California.

25 30. Accounting for employee turnover during the relevant periods necessarily increases
26 this number. Plaintiff alleges Defendants' employment records would provide information as to the
27 number and location of all Class Members. Joinder of all members of the proposed Class is not
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1 practicable.

2 **B. Commonality**

3 31. There are questions of law and fact common to Class Members. These common
4 questions include, but are not limited to:

- 5 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
6 worked at a proper overtime rate of pay?
- 7 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for
8 all other time worked at the employee's regular rate of pay and a rate of pay that is
9 greater than the applicable minimum wage?
- 10 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class
11 Members to take compliant meal periods?
- 12 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed or interrupted meal periods?
- 14 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class
15 Members to take compliant rest periods?
- 16 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages for missed rest periods?
- 18 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
19 Members upon termination or resignation all wages earned?
- 20 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
21 section 203?
- 22 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
23 Class Members with accurate wage statements?
- 24 J. Did Defendants fail to pay Class Members in a timely fashion as required under Labor
25 Code section 204?
- 26 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
27 losses incurred in direct consequence of the discharge of their duties or by obedience
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1 to the directions of Defendants as required under Labor Code section 2802?

2 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
3 with compensation at their final rate of pay for vested paid vacation time?

4 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
5 section 17200, *et seq.*, by their unlawful practices as alleged herein?

6 N. Are Class Members entitled to restitution of wages under Business and Professions
7 Code section 17203?

8 O. Are Class Members entitled to costs and attorneys' fees?

9 P. Are Class Members entitled to interest?

10 **C. Typicality**

11 32. The claims of Plaintiff herein alleged are typical of those claims which could be alleged
12 by any Class Members, and the relief sought is typical of the relief which would be sought by each
13 Class Member in separate actions. Plaintiff and Class Members sustained injuries and damages
14 arising out of and caused by Defendants' common course of conduct in violation of laws and
15 regulations that have the force and effect of law and statutes as alleged herein.

16 **D. Adequacy of Representation**

17 33. Plaintiff will fairly and adequately represent and protect the interest of Class Members.
18 Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class
19 actions.

20 **E. Superiority of Class Action**

21 34. A class action is superior to other available means for the fair and efficient adjudication
22 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law
23 and fact common to Class Members predominate over any questions affecting only individual Class
24 Members. Class Members, as further described therein, have been damaged and are entitled to
25 recovery by reason of Defendants' policies and/or practices that have resulted in the violation of the
26 Labor Code at times, as set out herein.

27 35. Class action treatment will allow Class Members to litigate their claims in a manner
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1 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
2 any difficulties that are likely to be encountered in the management of this action that would preclude
3 its maintenance as a class action.

4 **FIRST CAUSE OF ACTION**

5 **(Failure to Pay Overtime Wages – Against All Defendants)**

6 36. Plaintiff realleges and incorporates by reference all of the allegations contained in the
7 preceding paragraphs as though fully set forth hereat.

8 37. At all relevant times, Plaintiff and Class Members were employees or former
9 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
10 Wage Orders.

11 38. At all times relevant to this Complaint, Labor Code section 510 was in effect and
12 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
13 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at
14 the rate of no less than one and one-half times the regular rate of pay for an employee.”

15 39. At all times relevant to this Complaint, Labor Code section 510 further provided that
16 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
17 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
18 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

19 40. Four (4) years prior to the filing of the Complaint in this Action through the present,
20 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
21 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
22 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
23 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
24 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
25 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
26 early to work and leave late work without being able to clock in for all that time, to suffer under
27 Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before clocking in
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1 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
2 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company
3 meetings off the clock, to make phone calls off the clock, to drive off the clock, and/or go through
4 security screenings and/or temperature checks off the clock; failing to include all forms of
5 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
6 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods
7 where overtime was worked and the additional compensation was earned for the purpose of
8 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
9 manipulation of time entries; and by attempting but failing to properly implement an alternative
10 workweek schedule (“AWS”) (including, without limitation, by failing to implement a written
11 agreement designating the regularly scheduled alternative workweek in which the specified number
12 of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot
13 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees
14 in the work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
15 failing to register an AWS election with the State of California, as required by Labor Code section
16 511 and applicable Wage Orders) to the detriment of Plaintiff and Class Members.

17 41. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than
18 eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
19 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
20 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
21 applicable IWC Wage Orders, and California law.

22 42. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been
23 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus
24 interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194 and
25 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

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1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 43. Plaintiff realleges and incorporates by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

5 44. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

7 45. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class
8 Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 46. For four (4) years prior to the filing of the Complaint in this Action through the present,
11 Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular
12 rate of pay that is above the minimum wage; engaged, suffered, or permitted employees to work off
13 the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early to
14 work and leave late work without being able to clock in for all that time, to suffer under Defendants'
15 control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift
16 tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest
17 periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings
18 off the clock, to make phone calls off the clock; to drive off the clock; detrimental rounding of
19 employee time entries; editing and/or manipulation of time entries to show less hours than actually
20 worked; failing to pay split shift premiums; and failing to pay reporting time pay to the detriment of
21 Plaintiff and Class Members.

22 47. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
23 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for
24 all hours worked or otherwise due.

25 48. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections
26 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
27 the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages,
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1 reasonable attorneys' fees and costs of suit.

2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Meal Periods – Against All Defendants)**

4 49. Plaintiff realleges and incorporates by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 50. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

8 51. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
9 employ an employee for a work period of more than five (5) hours without a timely meal break of not
10 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore,
11 no employer shall employ an employee for a work period of more than ten (10) hours per day without
12 providing the employee with a second timely meal period of not less than thirty (30) minutes in which
13 the employee is relieved of all of his or her duties.

14 52. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
15 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
16 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of
17 compensation for each workday that the meal period is not provided.

18 53. For four (4) years prior to the filing of the Complaint in this Action through the present,
19 Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free
20 uninterrupted meal periods every five hours of work without waiving the right to take them, as
21 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
22 Member's regular rate of compensation on the occasions that Class Members were not provided
23 compliant meal periods.

24 54. By their failure to provide Plaintiff and Class Members compliant meal periods as
25 contemplated by Labor Code section 512, among other California authorities, and failing, at times, to
26 provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
27 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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1 55. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
2 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed
3 for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

4 56. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
5 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
6 interest and penalties thereon, attorneys’ fees, and costs, under Labor Code sections 226 and 226.7,
7 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

8 **FOURTH CAUSE OF ACTION**

9 **(Failure to Provide Rest Periods – Against All Defendants)**

10 57. Plaintiff realleges and incorporates by reference all of the allegations contained in the
11 preceding paragraphs as though fully set forth hereat.

12 58. At all relevant times, Plaintiff and Class Members were employees or former
13 employees of Defendants covered by applicable Wage Orders.

14 59. California law and applicable Wage Orders require that employers “authorize and
15 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work
16 period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3
17 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts
18 of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest
19 period, and employees who work shifts of more than ten (10) hours must be provided thirty (30)
20 minutes of paid rest period.

21 60. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
22 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
23 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
24 regular rate of compensation for each work day that the rest period is not provided.

25 61. For four (4) years prior to the filing of the Complaint in this Action through the present,
26 Plaintiff and Class Members were, at times, not authorized or permitted to take complete, timely 10-
27 minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof.

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1 Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's
2 regular rate of compensation on the occasions that Class Members were not authorized or permitted
3 to take compliant rest periods.

4 62. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
5 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
6 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully
7 violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

8 63. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed
10 for rest periods that they were not authorized or permitted to take.

11 64. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
12 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus interest
13 and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of
14 Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

15 **FIFTH CAUSE OF ACTION**

16 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

17 65. Plaintiff realleges and incorporates by reference all of the allegations contained in the
18 preceding paragraphs as though fully set forth hereat.

19 66. At all relevant times, Plaintiff and Class Members were employees or former
20 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
21 Wage Orders.

22 67. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
23 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
24 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge
25 immediately upon termination. Class Members who resigned were entitled to payment of all wages
26 earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
27 gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the
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1 time of resignation.

2 68. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years
3 before the filing of the Complaint in this Action through the present, Defendants, due to the failure,
4 at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all
5 wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

6 69. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
7 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
8 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and
9 Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but
10 intentionally adopted policies or practices incompatible with the requirements of Labor Code sections
11 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or
12 resignation.

13 70. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
14 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
15 resignation, until paid, up to a maximum of thirty (30) days.

16 71. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
17 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
18 prior to termination or resignation.

19 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
20 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
21 waiting time penalties, interest, and their costs of suit, as well.

22 **SIXTH CAUSE OF ACTION**

23 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

24 73. Plaintiff realleges and incorporates by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

26 74. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

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1 75. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
4 wages earned; all applicable hourly rates in effect during the pay period and the corresponding number
5 of hours worked at each hourly rate; among other things.

6 76. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
7 before the filing of the Complaint in this Action through the present, Defendants failed to comply with
8 Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
9 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
10 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
12 at each hourly rate; among other things.

13 77. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
14 wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
15 and the other Class Members with accurate wage statements, but, at times, willfully provided wage
16 statements that Defendants knew were not accurate.

17 78. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
18 suffered injury. The absence of accurate information on Class Members' wage statements at times
19 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
20 mathematical computations to determine the amount of wages owed; causes difficulty and expense in
21 attempting to reconstruct time and pay records; and led to submission of inaccurate information about
22 wages and amounts deducted from wages to state and federal governmental agencies, among other
23 things.

24 79. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members are
25 entitled to recover \$50 for the initial pay period during the period in which violation of Labor Code
26 section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent pay
27 period, not to exceed an aggregate \$4,000.00 per employee.

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1 80. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure
2 section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full
3 amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees,
4 and costs of suit.

5 **SEVENTH CAUSE OF ACTION**

6 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

7 81. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
8 incorporate each by reference as though fully set forth hereat.

9 82. At all relevant times, Plaintiff and Class Members were employees or former
10 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

11 83. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th days,
12 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during
13 which the labor was performed, and labor performed between the 16th and the last day, inclusive, of
14 any calendar month, shall be paid for between the 1st and 10th day of the following month.”

15 84. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
16 independent and apart from, any other penalty provided in this article, every person who fails to pay
17 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
18 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
19 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
20 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
21 percent of the amount unlawfully withheld.”

22 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
23 before the filing of the Complaint in this Action through the present, Defendants employed policies
24 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
25 Labor Code section 204.

26 86. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
27 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred
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1 dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each
2 subsequent violation in connection with each payment that was made in violation of Labor Code
3 section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

4 87. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
5 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
6 interest, and their costs of suit, as well.

7 **EIGHTH CAUSE OF ACTION**

8 **(Violation of Labor Code § 2802 – Against All Defendants)**

9 88. Plaintiff realleges and incorporates by reference all of the allegations contained in the
10 preceding paragraphs as though fully set forth hereat.

11 89. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

13 90. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
14 his or her employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties . . .”

16 91. For three (3) years prior to the filing of the Complaint in this Action through the
17 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
18 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
19 obedience to the directions of Defendants that included, without limitation: using cellular phones for
20 work-related purposes.

21 92. During that time period, Plaintiff is informed and believes, and based thereon alleges
22 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand Class
23 Members for those losses and/or expenditures.

24 93. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
25 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the herein-
26 described losses and/or expenditures.

27 94. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
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1 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover reimbursement
2 for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

3 **NINTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 227.3 – Against All Defendants)**

5 95. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the
6 preceding paragraphs of this Complaint as though fully set forth hereon.

7 96. According to Labor Code section 227.3, whenever a contract of employment or
8 employer policy provides for paid vacations, and an employee is terminated without having taken off
9 his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
10 accordance with such contract of employment or employer policy respecting eligibility or time served.

11 97. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
12 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
13 that Plaintiff's employment contract with Defendants included paid vacations.

14 98. For at least four (4) years prior to the filing of this action and continuing to the present,
15 Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
16 employees or former employees within the State of California with compensation at their final rate of
17 pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

18 99. As a proximate result of Defendants' failure to pay vested vacation at the final rate of
19 Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code
20 section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their
21 final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and
22 Class Members, on the one hand, and Defendants, on the other hand.

23 100. As a further proximate result of Defendants' above-described acts and/or omissions,
24 Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
25 prejudgment interest.

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1 **TENTH CAUSE OF ACTION**

2 **(Unfair Competition – Against All Defendants)**

3 101. Plaintiff realleges and incorporates by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

5 102. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
6 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
7 Professions Code section 17200. Plaintiff is further informed and believes and based thereon alleges
8 that in addition to the unlawful conduct of Defendants alleged in the preceding paragraphs, for at least
9 four (4) years prior to the filing of this action and continuing to the present, Defendants have had a
10 consistent policy of failing to provide Plaintiff and similarly situated employees or former employees
11 within the State of California with the rights provided to them under the Healthy Workplace Healthy
12 Families Act of 2014, codified at Labor Code section 245, *et seq.* Due to their unlawful business
13 practices in violation of the Labor Code, Defendants have gained a competitive advantage over other
14 comparable companies doing business in the State of California that comply with their obligations to
15 compensate employees in accordance with the Labor Code.

16 103. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and Class
17 Members have suffered injury in fact and lost money or property.

18 104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members
19 are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and
20 requiring the establishment of appropriate and effective means to prevent further violations, as well
21 as restitution of all wages and other monies owed to them under the Labor Code, including interest
22 thereon, in which they had a property interest and which Defendants nevertheless failed to pay them
23 and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and
24 Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure
25 to comply with the Labor Code.

26 105. Plaintiff and Class Members are entitled to costs of suit under Code of Civil Procedure
27 section 1032 and interest under Civil Code section 3287.

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1 **DEMAND FOR JURY TRIAL**

2 106. Plaintiff demands a trial by jury on all causes of action contained herein.

3 **PRAYER**

4 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
5 against Defendants as follows:

- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
8 counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum and overtime wages
10 and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
11 1194, 1197 and 1199 and 227.3;
- 12 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 13 E. Damages for unpaid premium wages from missed meal and rest periods under,
14 among other Labor Code sections, 512, 558.1 and 226.7;
- 15 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
16 (e) and 558.1;
- 17 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 18 H. Penalties to timely pay wages under Labor Code section 210;
- 19 I. Damages under Labor Code sections 2802 and 558.1;
- 20 J. Preliminary and permanent injunctions prohibiting Defendants from further violating
21 the California Labor Code and requiring the establishment of appropriate and
22 effective means to prevent future violations;
- 23 K. Restitution of wages and benefits due which were acquired by means of any unfair
24 business practice, according to proof;
- 25 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 26 M. For attorneys' fees in prosecuting this action;
- 27 N. For costs of suit incurred herein; and
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