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10 Attorneys for Plaintiff DARIUS ROWSER
on behalf of himself, all others similarly situated
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 DARIUS ROWSER , on behalf of
16 himself, and all others similarly
situated,

17
18 Plaintiff,

19 vs.

20 TRUNK CLUB, INC., a Delaware
corporation; and DOES 1 through 10,
21 inclusive,

22 Defendants.
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Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

- (1) **FAIR LABOR STANDARDS ACT (29 U.S.C. § 201, ET SEQ.)**
- (2) **FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§ 1182.11-1182.13, 1194, 1194.2, 1197)**
- (3) **FAILURE TO PAY WAGES AND OVERTIME (CAL. LABOR CODE § 510)**
- (4) **MEAL-PERIOD LIABILITY (CAL. LABOR CODE § 226.7)**
- (5) **REST BREAK LIABILITY (CAL. LABOR CODE § 226.7)**
- (6) **FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES (CAL. LABOR CODE § 2808)**

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- (7) WAITING TIME PENALTIES
(CAL. LABOR CODE §§ 201,
202, AND 203)**
- (8) VIOLATION OF CAL. LABOR
CODE § 226(A)**
- (9) UNFAIR COMPETITION
(CAL. BUSINESS AND
PROFESSIONS CODE §§
17200, ET SEQ.)**
- (10) PENALTIES PURSUANT TO
THE PRIVATE ATTORNEY
GENERAL ACT (CAL.
LABOR CODE § 2699, ET
SEQ.)**

JURY TRIAL DEMANDED

1 Plaintiff Darius Rowser (“Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this Collective and Class Action Complaint against
3 Trunk Club, Inc., a Delaware corporation (“Trunk Club”), and Does 1 through 10
4 inclusive (Trunk Club and Does 1 through 10, inclusive shall hereinafter collectively
5 be referred to as “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby
8 brings this collective action for recovery of unpaid overtime wages under the Fair
9 Labor Standards Act (“FLSA”) and the California Labor Code (“Labor Code”).

10 2. This Court has jurisdiction over Defendants’ violations of the FLSA
11 pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts rights
12 arising under federal law. Defendants’ annual sales exceed \$500,000, and they have
13 more than two employees, so the FLSA applies in this case on an enterprise basis.
14 Additionally, the Court also has pendent jurisdiction over the related Labor Code
15 claims under 28 U.S.C. § 1367.

16 3. This Court has personal jurisdiction over Defendant because Defendant
17 maintains its principal place of business within this judicial district.

18 **VENUE**

19 4. Venue is proper under 28 U.S.C. 1391(c) because Defendants do and operate
20 a business within this judicial district and the acts alleged herein took place within
21 this judicial district.

22 5. Further, Plaintiff at all times relevant herein, was employed by Defendants
23 within this judicial district.

24 **PARTIES**

25 6. Plaintiff is an individual over the age of eighteen (18). At all relevant times
26 herein, Plaintiff was and currently is, a California resident, residing in this judicial
27 district.

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1 7. Defendant Trunk Club, Inc., is licensed to do business in the State of
2 California and its registered agent for service of process in California is Corporation
3 Creations Network, Inc., located at 1430 Truxtun Ave., 5th Floor, Bakersfield,
4 California 93301.

5 8. During the three years immediately preceding the filing of the Complaint in
6 this action and within the statute of limitations periods applicable to the First Cause
7 of Action pled herein, Defendants employed Plaintiff and other hourly non-exempt
8 employees within the United States (collectively “FLSA Class Members”). FLSA
9 Class Members were, and are, victims of Defendants’ policies and/or practices
10 complained of herein, lost money and/or property, and have been deprived of the
11 rights guaranteed to them by the FLSA.

12 9. During the four years immediately preceding the filing of the Complaint in
13 this action and within the statute of limitations periods applicable to the Second,
14 Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Causes of Action pled
15 herein, Defendants employed Plaintiff and other hourly non-exempt employees
16 within the State of California (collectively “California Class Members”).

17 10. Plaintiff is informed and believes, and thereon allege, that at all times
18 mentioned herein, Defendants were the employer of Plaintiff, the FLSA Class
19 Members, and the California Class Members because they: (1) exercised control
20 over the wages, hours, or working conditions of Plaintiffs and both Classes; (2)
21 suffered or permitted Plaintiff and the Members of both Classes to work; or (3)
22 engaged Plaintiffs and the Members’ of both Classes to work, thereby creating a
23 common law employment relationship.

24 11. Plaintiff is informed and believes and thereon alleges that each of the
25 Defendants, including the Doe defendants, acted in concert with each and every
26 other Defendant, intended to and did participate in the events, acts, practices and
27 courses of conduct alleged herein, and was a proximate cause of damage and injury
28 thereby to Plaintiff, the FLSA Class Members, and the California Class Members as

1 alleged herein.

2 12. Based in Chicago Illinois, Trunk Club, a subsidiary of Nordstrom, is
3 nationwide chain of stores, offering personalized styling and sales of clothing
4 throughout the United States. According to its website, “[a]s a Nordstrom company,
5 Trunk Club has the service, selection, and convenience of one of the world’s best
6 retailers—you can even earn Nordstrom rewards.” *Available at*
7 <https://www.trunkclub.com>.

8 13. Plaintiff does not know the true names or capacities, whether individual,
9 partner, or corporate, of the Defendants sued herein as DOES 1 to 10, inclusive, and
10 for that reason, said Defendants are sued under such fictitious names, and Plaintiff
11 will seek leave from this Court to amend this Complaint when such true names and
12 capacities are discovered. Plaintiff is informed, and believes, and thereon alleges,
13 that each of said fictitious Defendants, whether individual, partners, agents, or
14 corporate, was responsible in some manner for the acts and omissions alleged
15 herein, and proximately caused Plaintiff, the FLSA Class Members, and the
16 California Class Members to be subject to the unlawful employment practices,
17 wrongs, injuries and damages complained of herein.

18 14. At all times herein mentioned, each of said Defendant participated in the
19 doing of the acts hereinafter alleged to have been done by the named Defendant; and
20 each of them, were the agents, servants, and employees of each and every one of the
21 other Defendant, as well as the agents of all Defendant, and at all times herein
22 mentioned were acting within the course and scope of said agency and employment.
23 Defendant, and each of them, approved of, condoned, and/or otherwise ratified each
24 and every one of the acts or omissions complained of herein.

25 15. At all times mentioned herein, Defendant was a member of and engaged in a
26 joint venture, partnership, and common enterprise, and acting within the course and
27 scope of and in pursuance of said joint venture, partnership, and common enterprise.
28 Further, Plaintiff alleges that all Defendants were joint employers for all purposes of

1 Plaintiff, the FLSA Class Members, and the California Class Members.

2 **ADMINISTRATIVE REMEDIES**

3 16. Pursuant to California Labor Code § 2699.3 and other provisions of
4 California law, Plaintiff has exhausted all administrative remedies and satisfied all
5 private, administrative, and judicial prerequisites to the institution of this action.
6 Specifically, on June 13, 2017 Plaintiff sent notice to the California Labor and
7 Workforce Development Agency (LWDA) and Defendant including specific
8 provisions of the Labor Code that have been violated and facts and theories to
9 support such violations. The LWDA has not provided notice of its intent to
10 investigate the alleged violations within 65 calendar days of the notice.

11 17. Pursuant to California Labor Code § 2699.3 and other provisions of
12 California law, Plaintiff is not required to satisfy any other private, administrative or
13 judicial prerequisites to the institution of this action and therefore has exhausted all
14 appropriate administrative remedies.

15 **GENERAL FACTUAL ALLEGATIONS**

16 18. Plaintiff was employed by Defendants within the statutory time frame as a
17 non-exempt employee in Los Angeles, California.

18 19. During FLSA Class Members and the California Class Members
19 (collectively “Class Members”) employment with Defendants, Defendants’ policy
20 and practice was to pay Class Members on a draw system, where Class Members
21 would earn commission pay, versus an hourly wage. Class Members regularly
22 worked in excess of eight (8) hours a day, and or forty (40) hours a week. However,
23 Defendants knowingly permitted and required Class Members to perform work, off-
24 the-clock, as part of their regular working hours, for which Class Members were not
25 paid wages. Specifically, Class Members were required to perform off-the-clock
26 work, under Defendants’ employ including, but not limited to: working from home,
27 communicating with clients, attending involuntary work related events after working
28 hours, conducting involuntary independent study and homework, and attending

1 involuntary training and classroom sessions, all directly related to Class Members’
2 job under Defendants’ employ all in excess of their scheduled shifts and for which
3 they were never paid wages.

4 20. Class Members were pressured by Defendants to perform all the
5 uncompensated work above. Accordingly, Defendants were aware that Class
6 Members were working these off-the-clock hours, without proper compensation.
7 These additional uncompensated working hours were directly related to the Class
8 Members’ jobs.

9 21. All this additional uncompensated time, discussed above, was not
10 factored into Class Members’ draw versus commission pay amounts. Accordingly,
11 Defendants defective policies and practices resulted in Class Members working
12 hours under Defendants’ employ without being paid all wages, including all
13 required overtime wages earned for hours worked in excess of eight (8) hours a day
14 and/or forty (40) hours a week.

15 22. All the uncompensated working time performed by Class Members,
16 discussed above, were integral and indispensable to the job duties and
17 responsibilities of Plaintiff and the FLSA Class Members.

18 23. The FLSA Class Members include of all Defendants’ current and
19 former hourly non-exempt employees who worked at any of Defendants’ locations
20 throughout the United States, including but not limited to its locations in: Los
21 Angeles, California; Boston, Massachusetts; Charleston, South Carolina; Chicago,
22 Illinois; Highland Park, Illinois; Dallas, Texas; Washington, D.C.; and New York,
23 New York, and who were not paid all wages and overtime, due to Defendants’
24 policy and/or practice of requiring Class Members to work additional working hours
25 without compensation, during the three years immediately preceding the filing of the
26 Complaint through the present. The California Class Members include only those
27 current and former hourly non-exempt employees who worked in California.

28 24. Plaintiff has filed a consent to join this FLSA Collective Action,

1 attached to this Complaint as Exhibit A.

2 25. At all relevant times, Defendants directed and directly benefited from
3 the uncompensated work performed by Plaintiff and the Class Members.

4 26. At all relevant times, Defendants controlled the work schedules, duties,
5 protocols, applications, assignments and employment conditions of Plaintiff and
6 Class Members.

7 27. At all relevant times, Defendants were able to track the amount of time
8 Plaintiff and Class Members spent performing uncompensated work under
9 Defendants' employ, as discussed herein; however, Defendants failed to document,
10 track, or pay Plaintiff and Class Members for the off-the-clock work they
11 performed. At all relevant times, Plaintiff and Class Members were non-exempt
12 hourly employees, subject to the requirements of the FLSA. At all relevant times,
13 Defendants used their training, home study, sales, work event, and general
14 employment policies against Plaintiff and Class Members in order to cause them
15 into performing off-the-clock work. At all relevant times, Defendants' policies and
16 practices deprived Plaintiff and Class Members of wages owed for uncompensated
17 work they performed under Defendants' employ. Because Plaintiff and Class
18 Members typically worked 40 hours or more in a workweek, Defendants' policies
19 and practices also deprived them of overtime pay.

20 28. Defendants knew or should have known that the uncompensated working
21 time spent by Plaintiff and Class Members is compensable under the law. Indeed,
22 there is no conceivable way for Defendants to establish that it acted in good faith.

23 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

24 29. Plaintiff brings this action pursuant to 29 U.S.C. § 216 of the FLSA and
25 Rule 23 of the Federal Rules of Civil Procedure ("FRCP"). Plaintiff seeks to
26 represent himself and 2 classes of individuals:

27 1) Collective Action Class Pursuant to 29 U.S.C. § 216 of the FLSA, "*All*
28 *current and former hourly non-exempt employees who worked for*

1 *Defendant at any time from three years prior to the filing of this*
2 *Representative Action Complaint through judgment” (the “FLSA*
3 *Class”); and*

4 2) *Class Action Pursuant to Rule 23 of the FRCP, “All non-exempt hourly*
5 *employees, who worked for Defendant, within the State of California,*
6 *from four years prior to the filing of this Class Action Complaint*
7 *through judgment” (the “California Class”).*

8 30. Defendant is liable under the FLSA for, *inter alia*, failing to properly
9 compensate Plaintiff and FLSA Class Members for all hours worked.

10 31. Consistent with Defendants’ policy, pattern, or practice, Plaintiff and
11 the FLSA Class Members were not paid premium overtime compensation when they
12 worked beyond 40 hours in a workweek.

13 32. Defendant is also liable to the California Class Members under the
14 California Labor Code for their common policy, practice, and/or pattern of: failing
15 to pay minimum wages for all hours worked; failing to pay proper overtime in
16 violation of Labor Code § 510 for all hours worked; failing to provide compliant
17 meal periods and rest breaks, or premium pay in lieu thereof, in violation of Labor
18 Code §§ 512 and 226.8; failing to reimburse for necessary business expenditures in
19 violation of Labor Code § 2802; failing to issue accurate itemized wage statements
20 in violation of Labor Code § 226(a); Waiting time penalties under Labor Code §
21 203; unfair competition under California Business and Professions Code § 17200, *et*
22 *seq.*; and penalties under the Private Attorney General Act, Ca. Labor Code § 2699,
23 *et seq.* (“PAGA”).

24 **Common Questions of Law and Fact Predominate/
25 Well Defined Community of Interest**

26 33. There are common questions of law and fact as to Plaintiff and all other
27 similarly situated employees, which predominate over questions affecting only
28 individual members including, without limitation to, whether Defendants’ policies

1 and/or practices of:

- 2 a. Requiring Plaintiff and FLSA Class Members to work hours without
3 compensations and, as a result, failing to properly compensate Plaintiff
4 and FLSA Class Members minimum wages and overtime for all
5 overtime hours worked;
- 6 b. Requiring Plaintiff and the California Class Members to work hours
7 without compensation and , as a result, failing to properly compensate
8 Plaintiff and the California Class Members minimum wages and
9 overtime for all overtime hours worked;
- 10 c. Failing to provide the California Class Members with compliant rest
11 breaks, or premium pay in lieu thereof, in violation of Labor Code §§
12 512 and 226.7;
- 13 d. Failing to provide the California Class Members with compliant meal
14 periods, or premium pay in lieu thereof, in violation of Labor Code §§
15 512 and 226.7;
- 16 e. Failing to reimburse the California Class Members for necessary
17 business expenditures incurred while executing their duties under
18 Defendants' employ, in violation of Labor Code § 2802;
- 19 f. Failing to issue accurate itemized wage statements to the California
20 Class Members, in violation of Labor Code § 226(a);
- 21 g. Failing to pay final wages to the California Class Members in
22 accordance with Labor Code §§ 201 and 202;
- 23 h. Engaging in unfair competition or business practices in violation of
24 California Business and Professions Code § 17200, *et seq.*
- 25 i. Failing to pay the California Class Members on a semi-monthly basis
26 in accordance with Labor Code § 204; and,

27 **Predominance of Common Questions**

28 34. Common questions of law and fact predominate over questions that

1 affect only individual Class Members. The common questions of law set forth above
2 are numerous and substantial and stem from Defendants' uniform policies and/or
3 practices of violating the FLSA and California Labor Code above. As such, these
4 common questions predominate over individual questions concerning each
5 individual Class Member's showing as to his or her eligibility for recovery or as to
6 the amount of damages.

7 **Typicality**

8 35. The claims of Plaintiff are typical of the claims of both the FLSA Class
9 and California Class because Plaintiff was employed by Defendants as an hourly
10 non-exempt employee in California, and the United States, during the statute of
11 limitations period. As alleged herein, Plaintiff, like the members of the Class, was
12 deprived wages for all hours worked including all overtime wages under the FLSA,
13 compliant meal and rest breaks, reimbursements for necessary expenditures
14 incurred, compliant wage statements, and the timely payment of final wages, all due
15 to Defendants' common policies and/or practices.

16 **Adequacy of Representation**

17 36. Plaintiff is fully prepared to take all necessary steps to fairly and
18 adequately represent the interests of FLSA and California Class Members.
19 Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately
20 represent the members of both Classes and Plaintiff. Plaintiff's attorneys have
21 prosecuted numerous wage-and-hour class actions in state and federal courts, and
22 are committed to vigorously prosecuting this action on behalf of Plaintiff, FLSA
23 Class Members, and California Class Members

24 **Superiority**

25 37. The FLSA and the Labor Code are remedial in nature and serve an
26 important public interest in establishing minimum working conditions and standards
27 through California and the United States. These labor standards protect the average
28 working employee from exploitation by employers who have the responsibility to

1 follow the laws and who may seek to take advantage of superior economic and
2 bargaining power in setting onerous terms and conditions of employment.

3 **FIRST CAUSE OF ACTION**

4 **(29 U.S.C. § 216(b) Collective Action)**

5 **VIOLATION OF THE FAIR LABORS STANDARDS ACT**

6 **28 U.S.C. § 201, ET SEQ.**

7 **FAILURE TO PAY WAGES AND OVERTIME**

8 **(By Plaintiff and all FLSA Class Members against all Defendants)**

9 38. Plaintiff re-alleges and incorporates all previous paragraphs set forth
10 herein.

11 39. At all times relevant to this action, Defendants were subject to the
12 mandates of the FLSA, 29 U.S.C. § 201, *et seq.* See also 29 C.F.R. § 791.2(b).

13 40. At all times relevant to this action, Plaintiff was an “employee” of
14 Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

15 41. Plaintiff and other FLSA Class Members, by virtue of their job duties
16 and activities actually performed, are all non-exempt employees.

17 42. At all times relevant to this action, Defendants “suffered or permitted”
18 Plaintiffs and the FLSA Class Members to work and thus “employed” them within
19 the meaning of 29 U.S.C. § 203(g) of the FLSA.

20 43. At all times relevant to this action, Defendants required Plaintiff and
21 FLSA Class Members to perform work under Defendants employ but failed to pay
22 them the federally mandated wages and overtime compensation for all services
23 performed. Specifically, FLSA Class Members were required to perform off-the-
24 clock work, under Defendants’ employ including, but not limited to: working from
25 home; communicating with clients; attending involuntary work related events after
26 working hours; conducting involuntary independent study and homework; and
27 attending involuntary training and classroom sessions, all directly related to FLSA
28 Class Members’ job under Defendants’ employ; all in excess of their scheduled

1 shifts; and for which they were never paid mandatory wages.

2 44. The uncompensated work performed Plaintiff and FLSA Class
3 Members were an essential part of their jobs and these activities and the time
4 associated with these activities is not *de minimis*.

5 45. In workweeks where Plaintiff and other FLSA Class Members worked
6 40 hours or more, the uncompensated off-the-clock work time, and all other
7 overtime should have been paid at the federally mandated rate of 1.5 times each
8 employee's regularly hourly wage, including the shift differential where applicable.
9 29 U.S.C. § 207.

10 46. Defendants' violations of the FLSA were knowing and willful.
11 Defendants knew or could have determined how long it takes for the FLSA Class
12 Members to perform these uncompensated and off-the-clock work. Further,
13 Defendants could have easily accounted for and properly compensated Plaintiff and
14 the FLSA Class Members for these work activities, but refused to.

15 47. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a
16 violation of the Act, an employee is entitled to his or her unpaid wages (including
17 unpaid overtime), plus an additional equal amount in liquidated damages (double
18 damages), plus costs and reasonable attorneys' fees.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CALIFORNIA**

21 **LABOR CODE §§ 1182.11-1182.13, 1194, 1194.2, AND 11197**

22 **(By Plaintiff and the California Class Members Against All Defendants)**

23 48. Plaintiff realleges and incorporates all preceding paragraphs, as though
24 set forth in full herein.

25 49. Defendants failed to pay the California Class Members minimum
26 wages for all hours worked. Specifically, Defendants had a common policy,
27 practice, and/or pattern of requiring the California Class Members to perform off-
28 the-clock work, under Defendants' employ including, but not limited to: working

1 from home; communicating with clients; attending work related events after
2 working hours; conducting independent study and homework; and attending
3 classroom sessions, all in excess of their scheduled shifts and for which they were
4 never paid wages. California Labor Code § 1197, entitled “Pay of Less Than
5 Minimum Wage” states:

6 The minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to
8 employees, and the payment of a less wage than the
9 minimum so fixed is unlawful.

10 50. The applicable minimum wages fixed by the commission for work
11 during the relevant period is found in the Wage Orders. Pursuant to the Wage
12 Orders, Plaintiff and the California Class Members are therefore entitled to double
13 the minimum wage during the relevant period.

14 51. The minimum wage provisions of California Labor Code are
15 enforceable by private civil action pursuant to California Labor Code § 1194(a)
16 which states:

17 Notwithstanding any agreement to work for a lesser
18 wage, any employee receiving less than the legal
19 minimum wage or the legal overtime compensation
20 applicable to the employee is entitled to recover in a civil
21 action the unpaid balance of the full amount of this
22 minimum wage or overtime compensation, including
23 interest thereon, reasonable attorney’s fees and costs of
24 suit.

25 52. As described in California Labor Code §§ 1185 and 1194.2, any action
26 for wages incorporates the applicable Wage Order of the California Industrial
27 Welfare Commission.

28 53. California Labor Code § 1194.2 also provides for the following
remedies:

 In any action under Section 1194 . . . to recover wages
because of the payment of a wage less than the minimum
wages fixed by an order of the commission, an employee
shall be entitled to recover liquidated damages in an
amount equal to the wages unlawfully unpaid and interest
thereon.

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54. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and the California Class Members.

55. Wherefore, the California Class Members are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES AND OVERTIME IN VIOLATION OF
CALIFORNIA LABOR CODE § 510

(By Plaintiff and the California Class Members Against All Defendants)

56. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

57. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay the California Class Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek.

58. Specifically, Defendants had a consistent policy, practice, and/or pattern of not paying the California Class Members overtime. The California Class Members consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, the California Class Members were paid a lump sum, at straight time, for all hours worked. Additionally, as discussed above, the California Class Members were required to work off-the-clock hours without pay including working from home; communicating with clients; attending work related events

1 after working hours; conducting independent study and homework; and attending
2 classroom sessions, all in excess of their scheduled shifts and for which they were
3 never paid wages. These uncompensated working hours caused the California Class
4 Members to work in excess of eight (8) hours on a given day, and/or forty (40)
5 hours in a given week, further entitling the California Class Members to overtime
6 wages which they were never paid.

7 59. Defendants' failure to pay compensation in a timely fashion also
8 constituted a violation of California Labor Code § 204, which requires that all wages
9 shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to
10 the present, in direct violation of that provision of the California Labor Code,
11 Defendants have failed to pay all wages and overtime compensation earned by the
12 California Class Members. Each such failure to make a timely payment of
13 compensation to the California Class Members constitutes a separate violation of
14 California Labor Code § 204.

15 60. Moreover, given Defendants' forgoing violations, Defendants also
16 violated Labor Code § 1174 requiring employers to keep records showing payroll
17 records and the hours worked daily by and the wages paid to employees.

18 61. The California Class Members have been damaged by these violations
19 of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial
20 Welfare Commission).

21 62. Consequently, pursuant to California Labor Code §§ 204, 510, and
22 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants
23 are liable to the California Class Members for the full amount of all their unpaid
24 wages and overtime compensation, with interest, plus their reasonable attorneys'
25 fees and costs.

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FOURTH CAUSE OF ACTION

MEAL PERIOD LIABILITY UNDER CALIFORNIA LABOR CODE § 226.7

(By Plaintiff and the California Class Members Against All Defendants)

63. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

64. The California Class Members regularly worked shifts greater than five (5) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes.

65. Defendants had a common policy, practice, and/or pattern of failing to provide the California Class Members with meal periods as required under the Labor Code. Specifically, the California Class Members were required to work through their meal periods, nor were they afforded the opportunity to take uninterrupted meal periods in accordance with Cal. Labor Code § 512. Moreover, what meal periods the California Class Members did receive were less than 30 minutes, all in violation of Labor Code and applicable Wage Orders. Moreover, Defendants failed to compensate the California Class Members for each meal period not provided or inadequately provided, in the form of “premium pay” as required under Labor Code § 226.7.

66. Therefore, pursuant to Labor Code § 226.7, the California Class Members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial.

FIFTH CAUSE OF ACTION

REST BREAK LIABILITY UNDER CALIFORNIA LABOR CODE § 226.7

(By Plaintiff and the California Class Members Against All Defendants)

67. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

1 68. The California Class Members consistently worked consecutive four
2 (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage Order,
3 Employees were entitled to paid rest breaks of not less than ten (10) minutes for
4 each consecutive four (4) hour shift.

5 69. Defendants had a common policy, practice, and/or pattern of failing to
6 provide the California Class Members with timely rest breaks of not less than ten
7 (10) minutes for each consecutive four (4) hour shift.

8 70. Moreover, Defendants did not compensate the California Class
9 Members with an additional hour of pay at each the California Class Members'
10 effective hourly rate for each day that Defendants failed to provide them with
11 adequate rest breaks, as required under Labor Code § 226.7.

12 71. Therefore, pursuant to Labor Code § 226.7, the California Class
13 Members are entitled to damages in an amount equal to one (1) hour of wages at
14 their effective hourly rates of pay for each day worked without the required rest
15 breaks, a sum to be proven at trial.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES IN**
18 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

19 **(By Plaintiff and the California Class Members Against All Defendants)**

20 72. Plaintiff realleges and incorporates all preceding paragraphs, as though
21 set forth in full herein.

22 73. Under Labor Code § 2802(a) an employer must indemnify its
23 employees for all necessary expenditures or losses incurred by the employee in
24 direct consequence of the discharge of his or her duties, or of his or her obedience to
25 the directions of the employer.

26 74. Defendants had a common policy, practice, and/or pattern of
27 consistently failing to reimburse the California Class Members for these necessarily
28 incurred business expenses. The California Class Members incurred necessary

1 expenditures in the performance of their job duties for Defendants. Specifically, the
2 California Class Members had to purchase computers and cellular telephone service
3 to perform their duties under Defendants' employ, including but not limited to,
4 communicating with clients, performing at home work study, and responding to
5 emails. The California Class Members also incurred expenses in the form of gas and
6 mileage for driving to work related events, discussed herein. All the forgoing
7 expenses were incurred by the California Class Members in order to execute their
8 duties under Defendants' employ, and for which they were never reimbursed

9 75. As a result of the unlawful acts of Defendants, the California Class
10 Members have been deprived of reimbursement in amounts to be determined at trial;
11 they are entitled to recovery of such amounts, plus interest and penalties thereon,
12 attorneys' fees, and costs.

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES UNDER CALIFORNIA LABOR CODE § 203**

15 **(By Plaintiff and the California Class Members Against All Defendants)**

16 76. Plaintiff realleges and incorporates all preceding paragraphs, as though
17 set forth in full herein.

18 77. Numerous California Class Members are no longer employed by
19 Defendants; they either quit Defendants' employ or were fired therefrom.

20 78. In failing to pay the California Class Members their minimum wages,
21 overtime wages, premium pay for deficiently provided meal periods and rest breaks,
22 and unreimbursed expenses, all discussed above, Defendants willfully failed to pay
23 these the California Class Members all wages due and certain at the time of
24 termination or within seventy-two (72) hours of resignation.

25 79. The wages withheld from these the California Class Members by
26 Defendants remained due and owing for more than thirty (30) days from the date of
27 separation of employment.

28 80. Defendants' failure to pay wages, as alleged above, was willful in that

1 Defendants knew wages to be due but failed to pay them; this violation entitles the
2 California Class Members to penalties under Labor Code § 203, which provides that
3 an employee’s wages shall continue until paid for up to thirty (30) days from the
4 date they were due.

5 **EIGHTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA LABOR CODE § 226(a)**

7 **(By Plaintiff and the California Class Members Against All Defendants)**

8 81. Plaintiff realleges and incorporates all preceding paragraphs, as though
9 set forth in full herein.

10 82. California Labor Code § 226(a) requires an employer to furnish each of
11 his or her employees with an accurate, itemized statement in writing showing,
12 among other things: (2) total hours worked by the employee . . . (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee. These statements must be appended to
15 the detachable part of the check, draft, voucher, or whatever else serves to pay the
16 employee’s wages; or, if wages are paid by cash or personal check, these statements
17 may be given to the employee separately from the payment of wages; in either case
18 the employer must give the employee these statements twice a month or each time
19 wages are paid.

20 83. Defendants failed to provide the California Class Members with
21 accurate, itemized wage statements in writing as required by the California Labor
22 Code. Specifically, the wage statements issued to the California Class Members
23 failed to include the requisite information under Subsections (2) and (9) above.
24 Additionally, the California Class Members wage statements were further defective
25 in that they failed to account for the unpaid wages, overtime, unreimbursed
26 expenses, and premium pay for deficiently provided meal periods and rest breaks,
27 all of which Defendants knew, or reasonably should have known, were owed to the
28 California Class Members, as alleged above.

1 84. Moreover, in doing so, from at least one (1) year prior to the filing of
2 this lawsuit and continuing to the present, Defendants failed to timely pay the
3 California Class Members wages on a semimonthly basis as required under Labor
4 Code § 204. Defendants also failed to maintain records showing accurate hours
5 worked daily and the wages paid to the California Class Members, as well as the
6 meal and rest periods taken by the California Class Members, as required by Labor
7 Code § 1174 and the applicable IWC wage orders.

8 85. As a direct and proximate cause of Defendants' violation of Labor
9 Code § 226(a), the California Class Members suffered injuries, including among
10 other things confusion over whether they received all wages owed them, the
11 difficulty and expense involved in reconstructing pay records, and forcing them to
12 make mathematical computations to analyze whether the wages paid in fact
13 compensated them correctly for all hours worked.

14 86. Pursuant to Labor Code §§ 226(a) and 226(e), the California Class
15 Members are entitled to recover the greater of all actual damages or fifty dollars
16 (\$50) for the initial pay period in which a violation occurs and one hundred dollars
17 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
18 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
19 and reasonable attorneys' fees.

20 **NINTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND**
22 **PROFESSIONS CODE § 17200, ET SEQ.**

23 **(By Plaintiff and the California Class Members Against All Defendants)**

24 87. Plaintiff realleges and incorporates all preceding paragraphs, as though
25 set forth in full herein.

26 88. Plaintiff, on behalf of himself, the California Class Members, and the
27 general public, brings this claim pursuant to California Business & Professions Code
28 § 17200, *et seq.* The conduct of Defendants as alleged in this Complaint has been

1 and continues to be unfair, unlawful, and harmful to the California Class Members
2 and the general public. Plaintiff seeks to enforce important rights affecting the
3 public interest within the meaning of Code of Civil Procedure
4 § 1021.5.

5 89. Plaintiff is a “person” within the meaning of California Business &
6 Professions Code § 17204, has suffered injury, and therefore has standing to bring
7 this cause of action for injunctive relief, restitution, and other appropriate equitable
8 relief.

9 90. Business & Professions Code § 17200 et seq. prohibits unlawful and
10 unfair business practices.

11 91. Wage-and-hour laws express fundamental public policies. Paying
12 employees minimum wages, their wages, overtime, and reimbursements for
13 necessary expenditures, and providing them with meal periods, etc., are fundamental
14 public policies of California. Labor Code § 90.5(a) articulates the public policies of
15 this State vigorously to enforce minimum labor standards, to ensure that employees
16 are not required or permitted to work under substandard and unlawful conditions,
17 and to protect law-abiding employers and their employees from competitors who
18 lower costs to themselves by failing to comply with minimum labor standards.

19 92. Defendants have violated statutes and public policies. Through the
20 conduct alleged in this Complaint Defendants have acted contrary to these public
21 policies, have violated specific provisions of the Labor Code, and have engaged in
22 other unlawful and unfair business practices in violation of Business & Professions
23 Code § 17200 et seq.; which conduct has deprived Plaintiff, all California Class
24 Members, and all interested persons, of the rights, benefits, and privileges
25 guaranteed to all employees under the law.

26 93. Defendants’ conduct, as alleged hereinabove, constitutes unfair
27 competition in violation of the Business & Professions Code § 17200 et seq.

28 94. Defendants, by engaging in the conduct herein alleged, by failing to

1 pay wages, overtime, provide meal periods, etc., either knew or in the exercise of
2 reasonable care should have known that their conduct was unlawful; therefore their
3 conduct violates the Business & Professions Code § 17200 et seq.

4 95. As a proximate result of the above-mentioned acts of Defendants,
5 Plaintiff and the California Class Members have been damaged, in a sum to be
6 proven at trial.

7 96. Unless restrained by this Court Defendants will continue to engage in
8 such unlawful conduct as alleged above. Pursuant to the California Business &
9 Professions Code this Court should make such orders or judgments, including the
10 appointment of a receiver, as may be necessary to prevent the use by Defendants or
11 their agents or employees of any unlawful or deceptive practice prohibited by the
12 Business & Professions Code, including but not limited to the disgorgement of such
13 profits as may be necessary to restore the California Class Members to the money
14 Defendants have unlawfully failed to pay.

15 **TENTH CAUSE OF ACTION**

16 **PENALTIES PURSUANT TO**

17 **CALIFORNIA LABOR CODE § 2699, ET SEQ.**

18 **(By Plaintiff and the California Class Members Against All Defendants)**

19 97. Plaintiff realleges and incorporates all preceding paragraphs, as though
20 set forth in full herein.

21 98. Plaintiff and the California Class Members are aggrieved employees as
22 defined under Labor Code § 2699(c) in that they suffered the violations alleged in
23 this Complaint and were employed by the alleged violators, Defendants.

24 99. In failing to pay the California Class Members minimum wages and
25 overtime, failing to reimburse them for necessary business expenditures, failing to
26 provide them with proper meal and rest periods, in failing to provide accurate
27 itemized wage statements, and in failing to pay the California Class Members wages
28 upon termination or timely upon resignation, all discussed above, Defendants failed

1 to timely pay the California Class Members wages on a semimonthly basis as
2 required under Labor Code § 204. Defendants also failed to maintain records
3 showing accurate hours worked daily and the wages paid to the California Class
4 Members, as required by Labor Code § 1174 and the applicable IWC wage orders.

5 100. As such, the California Class Members seek wages and penalties under
6 Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code
7 provisions included under Labor Code § 2699.5 and includes the penalty provisions,
8 without limitation, based on the following California Labor Code sections: 201, 202,
9 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1199,
10 2802, 2698, and 2699, *et seq.*

11 101. The penalties shall be allocated as follows: 75% to the Labor and
12 Workforce Development Agency (LWDA) and 25% to the affected employee.

13 102. The California Class Members also seek any and all penalties and
14 remedies set forth in Labor Code § 558, which states:

15 (a) Any employer or other person acting on behalf of
16 an employer who violates, or causes to be violated, a
17 section of this chapter or any provision regulating hours
18 and days of work in any order of the Industrial Welfare
19 Commission shall be subject to a civil penalty as
20 follows: (1) For any initial violation, fifty dollars (\$50)
21 for each underpaid employee for each pay period for
22 which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages. (2) For
24 each subsequent violation, one hundred dollars (\$100)
25 for each underpaid employee for each pay period for
26 which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (3)
28 Wages recovered pursuant to this section shall be paid to
the affected employee.

(b) If upon inspection or investigation the Labor
Commissioner determines that a person had paid or
caused to be paid a wage for overtime work in violation
of any provision of this chapter, or any provision
regulating hours and days of work in any order of the

1 Industrial Welfare Commission, the Labor
2 Commissioner may issue a citation. The procedures for
3 issuing, contesting, and enforcing judgments for
4 citations or civil penalties issued by the Labor
5 Commissioner for a violation of this chapter shall be the
6 same as those set out in Section 1197.1.

7 (c) The civil penalties provided for in this section are in
8 addition to any other civil or criminal penalty provided by law.

9 103. Plaintiff has exhausted his administrative remedy by sending a
10 certified letter to the LWDA and Defendants postmarked on June 13, 2017. The
11 LWDA has not provided notice of its intent to investigate the alleged violations
12 within 65 calendar days of the postmark date of the letter

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests the following relief:

15 **As to the FLSA Class**

- 16 1. An Order certifying this case as a collective action in accordance with
17 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);
- 18 2. For an order appointing Plaintiff as representative of the FLSA Class
- 19 3. For an Order appointing Counsel for Plaintiff as Counsel for the FLSA
20 Class;
- 21 4. Upon Count I, for compensatory, consequential, general, and special
22 damages pursuant 29 U.S.C. §§ 207 and 216;
- 23 5. Liquidated damages and pre- and post-judgment interest on all due and
24 unpaid wages pursuant to 29 U.S.C. §§ 207 and 216;
- 25 6. Attorneys' fees and costs as provided by 29 U.S.C. §§ 206, 207, and
26 216; and
- 27 7. For such other and further relief the Court may deem proper

28 **As to the California Class**

1. For an order certifying this action as a class action under F.R.C.P. Rule

1 23, and appointment of Plaintiff and Plaintiff's counsel to represent the California
2 Class;

3 9. For an order appointing Plaintiff as the representative of the California
4 Class;

5 10. For an order appointing Plaintiff's counsel as class counsel for the
6 California Class;

7 11. For compensatory damages, under Labor Code § 1194, in the amount
8 of the unpaid minimum wages for work performed by Plaintiff and unpaid overtime
9 compensation from at least four (4) years prior to the filing of this action, according
10 to proof;

11 12. For liquidated damages, under Labor Code § 1194.2, in the amount
12 equal to the unpaid minimum wage and interest thereon, from at least four (4) years
13 prior to the filing of this action, according to proof;

14 13. For compensatory damages, under Labor Code §§ 510 and 1194, in the
15 amount of all unpaid wages, including overtime, as may be proven;

16 14. For compensatory damages, under Labor Code § 226.7, in the amount
17 of the hourly wage made by the California Class Members for each missed or
18 deficient meal period where no premium pay was paid therefor from four (4) years
19 prior to the filing of this action, as may be proven;

20 15. For compensatory damages, under Labor Code § 226.7, in the amount
21 of the hourly wage made by the California Class Members for each missed or
22 deficient rest breaks where no premium pay was paid therefore from four (4) years
23 prior to the filing of this action, as may be proven;

24 16. For compensatory damages, under Labor Code § 2802, in the amount
25 of all unreimbursed expenses, incurred by the California Class Members, from four
26 (4) years prior to the filing of this action, as may be proven;

27 17. For penalties pursuant to Labor Code § 226(e), as may be proven;

28 18. For penalties pursuant to Labor Code § 203, as may be proven;

1 19. For restitution for unfair competition pursuant to Business &
2 Professions Code § 17200 et seq., including disgorgement or profits, as may be
3 proven;

4 20. For an order enjoining Defendants and their agents, servants, and
5 employees, and all persons acting under, in concert with, or for them, from acting in
6 derogation of any rights or duties adumbrated in this Complaint;

7 21. For wages and penalties under Labor Code § 558, as may be proven;

8 22. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

9 23. For all general, special, and incidental damages as may be proven;

10 24. For punitive damages, subject to proof;’

11 25. For an award of pre-judgment and post-judgment interest;

12 26. For an award providing for the payment of the costs of this suit;

13 27. For an award of attorneys’ fees; and

14 28. For such other and further relief as this Court may deem proper and
15 just.

16

17 Dated: July 10, 2017

DAVID YEREMIAN & ASSOCIATES,
INC.

18

19

By: /s/ David Yeremian
David Yeremian
David Keledjian
Attorneys for Plaintiff
and the putative class

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JURY DEMAND

Plaintiff, Darius Rowser, individually and on behalf of all others similarly situated, by and through his attorneys, hereby demand a trial by jury.

Dated: July 10, 2017

DAVID YEREMIAN & ASSOCIATES,
INC.

By: /s/ David Yeremian
David Yeremian
David Keledjian
Attorneys for Plaintiff
and the putative class