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7 Attorneys for Defendant
Liberty Mutual Group Inc.
8

9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

11 STEPHEN MARANO, on behalf of the
individual and all others similarly situated;

12 Plaintiff,

13 vs.
14

15 LIBERTY MUTUAL GROUP, INC., a
Massachusetts Corporation; and DOES 1
through 50, inclusive,

16 Defendants.
17

Case No. 8:20-cv-2215

NOTICE OF REMOVAL

JURY TRIAL DEMANDED

[Filed concurrently with the declarations
of Katherine A. Roberts and Serena
Wannemacher; Notice of Related Cases,
Certification and Notice of Interested
Parties, and Civil Cover Sheet]

(SUPERIOR COURT OF
CALIFORNIA ORANGE COUNTY,
CASE NO. 30-2020-01165807-CU-OE-
CXC)

Date Action Filed: October 19, 2020
Served: October 23, 2020

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendant Liberty Mutual Group Inc. hereby
4 removes the above captioned *Stephen Marano v. Liberty Mutual Group, Inc.*, Case
5 No. 30-2020-01165807-CU-OE-CXC (the “State Court Action”), from the California
6 Superior Court for the County of Orange to this court, pursuant to 28 U.S.C. §§ 1332,
7 1441, 1446, 1453, and Federal Rules of Civil Procedure, Rule 81(c), on the grounds
8 that the State Court Action, filed October 19, 2020, is removable. In support of this
9 Notice of Removal, Defendant states the following:

10 **I. REMOVAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS**
11 **ACT**

12 1. The Class Action Fairness Act (“CAFA”) amended the diversity
13 jurisdiction statute, 28 U.S.C. § 1332, by adding provisions that give federal courts
14 original jurisdiction where the following factors are met:

- 15 a. The aggregate amount in controversy exceeds \$5,000,000;
- 16 b. Any member of Plaintiff’s proposed class is a citizen of a State
17 different from any defendant or any member of the plaintiff class is a
18 citizen or subject of a foreign state and any defendant is a citizen of a
19 State (“minimal diversity”);
- 20 c. The primary defendants are not states, state officials, or other
21 government entities against whom the district court may be foreclosed
22 from ordering relief; and
- 23 d. The number of members of Plaintiff’s proposed class is 100 or
24 more. 28 U.S.C. § 1332(d)(2); *see also Hart v. FedExGround Package*
25 *Sys., Inc.*, 457 F.3d 675, 679 (7th Cir. 2006).

26 2. Under § 1453, a defendant may remove a class action to federal court in
27 accordance with the requirements set forth in § 1446.

28

1 **A. Minimal Diversity**

2 3. Plaintiff Stephen Marano is a member of the putative class and is a
3 citizen of the State of California. Compl. ¶ 10.

4 4. Defendant Liberty Mutual Group Inc. is a citizen of the Commonwealth
5 of Massachusetts, which is its state of incorporation and state of its principal place of
6 business. Declaration of Serena Wannemacher (“Wannemacher Decl.”) ¶ 3.

7 5. Because Stephen Marano is a citizen of California and Liberty Mutual
8 Group Inc. is a citizen of Massachusetts, the minimal diversity requirement of the
9 CAFA is met.

10 6. Additionally, Defendant is not a state, state official, or other government
11 entity against whom the District Court may be foreclosed from ordering relief.

12 **B. Class Size and Amount in Controversy**

13 7. On or about October 19, 2020, Plaintiff Stephen Marano filed the State
14 Court Action. His Complaint (“Complaint” or “Compl.”) alleged certain California
15 law wage-and-hour claims on behalf of a putative class of “all individuals who are or
16 were employed by Defendants in California as Sales Representatives and equivalent
17 positions” since October 19, 2016. *See* Compl. ¶ 2. Defendant was served with the
18 Complaint on October 23, 2020.

19 8. Based on Defendant’s employment records, the putative class at issue in
20 the Complaint consists of 175 members; thus, the numerosity requirement under the
21 CAFA is met. *See* Wannemacher Decl. ¶ 7.

22 9. In addition, the aggregated amount in controversy for the putative class
23 exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(6) (“the
24 claims of the individual class members shall be aggregated to determine whether the
25 matter in controversy exceeds the sum or value of \$5,000,000”); Wannemacher Decl.
26 ¶ 12.

27 10. The calculations relating to the value of the claims at issue in the lawsuit
28 are based on Defendant’s actual employment records showing the number of weeks

1 each putative class member worked in the job classifications encompassed by the
2 applicable putative class definition, as well as the putative class members' average
3 base rate of pay during those weeks. *See* Wannemacher Decl. ¶ 9. These calculations
4 materially underestimate the alleged damages in this case because they do not take
5 into consideration sales commissions and bonuses that would factor into the regular
6 rate for purposes of overtime. *Id.*

7 11. Plaintiff has not yet alleged or disclosed information relating to the
8 number of alleged violations he is seeking for each claim (e.g., the number of alleged
9 unpaid overtime hours or meal and rest period violations per week). Therefore, in
10 order to calculate the amount of alleged damages, Defendant used conservative
11 assumptions based upon the minimum number of violations normally alleged in
12 similar putative class action lawsuits seeking relief for unpaid overtime, failure to
13 provide meal and/or rest breaks, failure to reimburse business expenses, failure to
14 provide accurate wage statements and related penalties. *See id.*; *See also* Declaration
15 of Katherine A. Roberts ("Roberts Decl.") ¶ 4-7. Defendant makes these reasonable
16 assumptions solely for purposes of calculating the amount in controversy, as
17 Defendant denies each of Plaintiff's claims and further denies it is liable to Plaintiff
18 for any amount whatsoever.

19 12. Defendant also used conservative estimates regarding future attorney's
20 fees claimed by Plaintiff under the statutes at issue in this litigation, which add at least
21 another \$250,000 to the amount in controversy. *See* Roberts Decl. ¶ 8 ; *Fritsch v.*
22 *Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (holding that "a
23 court must include future attorneys' fees recoverable by statute or contract when
24 assessing whether the amount in controversy requirement is met"). Plaintiff's
25 Complaint seeks attorneys' fees under the following statutes: California Labor Code
26 Sections 218.5, 226, 1194, and 2802, and California Code of Civil Procedure Section
27 1021.5. *See* Compl. ¶ 41-106.

28 **C. CAFA Exceptions Are Not Applicable**

1 13. Further, while § 1332(d)(3) & (4) recognize situations where this court
2 may or must decline jurisdiction despite the fact that minimal diversity and the
3 amount in controversy requirements of § 1332(d)(2) are satisfied, this case does not
4 fall into either category because Defendant is not a citizen of California. *See* §
5 1332(d)(3) (discretionary declination of jurisdiction limited to situation where “the
6 primary defendants are citizens of the state where the action was originally filed”) and
7 § 1332(d)(4)(A) (local controversy mandatory declination limited to where “at least
8 one defendant is . . . a citizen of the State in which the class action was filed”); *see*
9 *also* § 1332(d)(4)(B) (home state controversy mandatory declination limited to cases
10 where “the primary defendants, are citizens of the State in which the action was
11 originally filed”). Additionally, Plaintiff shoulders the burden of establishing that any
12 of these exceptions apply. *Hart*, 457 F.3d at 682 (“Our holding [is] that the plaintiff
13 has the burden of persuasion on the question whether the home-state or local
14 controversy exceptions apply.”); *see also Serrano v. 180 Connect, Inc.*, 478 F.3d
15 1018, 1024 (9th Cir. 2007) (adopting this rule and citing *Hart*).

TIMELINESS OF REMOVAL

16
17 14. Defendant’s Notice of Removal is timely because (a) the case first
18 became removable upon service of the Complaint on October 23, 2020 and (b) this
19 Notice is being filed within 30 days of such time. Roberts Decl. ¶ 2, Exh. A.

VENUE

20
21 15. Venue is proper in the Central District of California pursuant to § 1441(a)
22 because the county in which the State Court Action was pending is found within this
23 court’s district.

DEFENSES

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25 16. The removal of this action to the Central District of California does not
26 waive Defendant’s ability to assert any defense in this action.

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PLEADINGS

17. Pursuant to § 1446(a), a copy of all process, pleadings, and orders served on Defendant to date is attached as Exhibit A the Roberts Declaration.

18. Attached as Exhibit B to the Roberts Declaration is a true and correct conformed copy of Liberty Mutual’s Answer to the Plaintiff’s Complaint, filed in Orange County Superior Court on November 18, 2020.

NOTICE TO PLAINTIFFS AND THE STATE COURT

19. Pursuant to § 1446(d), in addition to serving a copy of this Notice of Removal on counsel for Plaintiff, Defendant is filing in the Orange County Superior Court and serving upon counsel for Plaintiff a separate document entitled “Defendant’s Notice of Filing a Notice of Removal to Federal Court.”

Accordingly, Defendant respectfully requests that the State Court Action be removed in its entirety to this Court.

DATED: November 20, 2020

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Katherine A. Roberts

Katherine A. Roberts
Beth Anne Scheel
Abigail Hudson

Attorneys for Defendant

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7 Attorneys for Defendant
 Liberty Mutual Group Inc.

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

10 STEPHEN MARANO, on behalf of the
 11 individual and all others similarly
 12 situated;

13 Plaintiff,

14 vs.

15 LIBERTY MUTUAL GROUP, INC.,
 and DOES 1 through 50, inclusive,

16 Defendants.

) Case No. 8:20-cv-2215

) **DECLARATION OF KATHERINE**
) **A. ROBERTS IN SUPPORT OF**
) **DEFENDANT'S NOTICE OF**
) **REMOVAL**

) State Action Filed: October 19, 2020
) State Action Served: October 23, 2020

1 **DECLARATION OF KATHERINE A. ROBERTS**

2 I, Katherine A. Roberts, declare as follows:

3 1. I am a partner with Sidley Austin LLP, counsel for Liberty Mutual Group
4 Inc. (“Defendant”) in this litigation. I have personal knowledge of the matters set
5 forth herein, and, if called upon to do so, could testify competently to their truth. I
6 submit this declaration in Support of Defendant’s Notice of Removal of *Stephen*
7 *Marano. v. Liberty Mutual Group, Inc.*, No. 30-2020-01165807-CU-OE-CXC (Supr.
8 Ct. Cal. filed Oct. 19, 2020), from the Superior Court of the State of California,
9 County of Orange, to the United States District Court, Central District of California.

10 2. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff
11 Stephen Marano’s (“Plaintiff”) Complaint filed in Orange County Superior Court on
12 October 19, 2020, Case No. 30-2020-01165807-CU-OE-CXC, along with the
13 accompanying Proof of Service, Summons, and Civil Case Cover Sheet, respectively.
14 These documents were served on Liberty Mutual on October 23, 2020.

15 3. Attached hereto as **Exhibit B** is a true and correct conformed copy of
16 Liberty Mutual’s Answer to Plaintiff’s Complaint, filed in Orange County Superior
17 Court on October 23, 2020.

18 4. I have been litigating wage and hour class actions for the past twelve
19 years. As a wage and hour litigator, I have extensive experience in litigating the types
20 of claims alleged in Plaintiff’s Complaint.

21 5. The removal petition utilizes the following assumptions for purposes of
22 its damages calculation:

- 23 • For claims that a nonexempt employee worked unpaid hours: five unpaid
24 overtime hours per week.
- 25 • For claims that a nonexempt employee was not provided with compliant
26 meal and/or rest periods: three meal periods not provided per week and
27 three rest periods not provided per week.

- For claims that employees were required to use their personal cell phones and vehicles for work purposes and were not reimbursed for reasonable and necessary business expenses: \$35/month for cell phone use and \$35/month for vehicle use.

6. In my experience litigating wage and hour claims, plaintiffs most frequently contend that such employees were not properly provided three to five meal periods and three to five rest periods per week. Additionally, in my prior experience litigating wage and hour cases involving individuals employed by insurance companies, the employees frequently allege working five to ten hours of unpaid overtime per week, thus the five hours of overtime per week utilized for this calculation is a conservative estimate. Finally, in my prior experience, plaintiffs seeking reimbursement for personal cell phones often seek \$40-\$50 per month for those expenses, and sales representatives in other California wage and hour cases I have handled routinely report driving more than 100 miles per month for work. At the current IRS rate of 57.5 cents per mile, that comes to \$57.50 per month, well over the \$35 per month assumed here.

7. As stated, the number of alleged violations for the purpose of these calculations is conservative, and a typical wage/hour class action plaintiff will allege violations for this type of putative class in excess of the numbers used to calculate the alleged damages in this case.

8. Plaintiff has claimed attorney's fees under multiple statutes in this lawsuit, including Labor Code Sections 226, 1194 and 2802. Defendant's reasonable estimates demonstrate the amount in controversy is more than \$5 million without attorney's fees. However, in my experience, a case such as this one is likely to take well in excess of 500 attorney hours. Defendant does not know Plaintiff's counsel's hourly rate, but a conservative estimate of \$500/hour would add another \$250,000 to the amount in controversy.

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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this Declaration is being executed this 20th day of November 2020, in the City and State of Los Angeles, California.


Katherine A. Roberts

Exhibit A

Electronically Filed by Superior Court of California, County of Orange, 10/21/2020 09:20:00 AM.
30-2020-01165807-CU-OE-CXC - ROA # 7 - DAVID H. YAMASAKI, Clerk of the Court By Sarah Loose, Deputy Clerk.

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

**LIBERTY MUTUAL GROUP, INC., a Massachusetts Corporation; and
DOES 1 through 50, inclusive,**

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

**STEPHEN MARANO, on behalf of the individual and all others
similarly situated;**

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

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

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

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

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

The name and address of the court is: **Orange County Superior Court**
(El nombre y dirección de la corte es): **Civil Complex Center**
751 W Santa Ana Blvd
Santa Ana CA 92701

CASE NUMBER: (Número del Caso):
30-2020-01165807-CU-OE-CXC

Judge Glenda Sanders

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jonathan Melmed, Melmed Law Group P.C., 1801 Century Park East, Suite 850, Los Angeles CA 90067; (310) 824-3828; (310) 862-6851

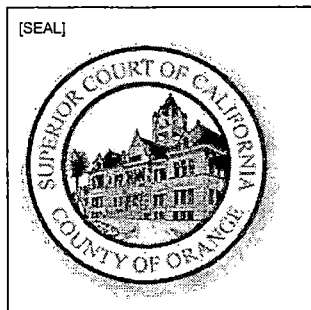
DATE: **10/21/2020**
(Fecha)

Clerk, by **DAVID H. YAMASAKI, Clerk of the Court**, Deputy
(Secretario) *Abrax* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

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

Electronically Filed by Superior Court of California, County of Orange, 10/19/2020 01:53:49 PM

30-2020-01165807-CU-OE-CXC (Case Number) DAVID H. YAMASAKI, Clerk of the Court By Georgina Barrios, Deputy Clerk.

Jonathan Melmed (SBN 290218)
 Melmed Law Group P.C.
 1801 Century Park East, Suite 850
 Los Angeles, CA 90067
 TELEPHONE NO.: (310) 824-3828 FAX NO. (Optional): (310) 862-6851
 ATTORNEY FOR (Name): Plaintiff Stephen Marano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
 STREET ADDRESS: 751 W Santa Ana Blvd
 MAILING ADDRESS: 751 W Santa Ana Blvd
 CITY AND ZIP CODE: Santa Ana, CA 92701
 BRANCH NAME: Civil Complex Center

CASE NAME: Marano v. Liberty Mutual Group, Inc.

| | | | |
|--|--|---|--|
| CIVIL CASE COVER SHEET | | Complex Case Designation | CASE NUMBER: 30-2020-01165807-CU-OE-CXC |
| <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) | <input type="checkbox"/> Limited (Amount demanded is \$25,000) | <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | JUDGE: Judge Glenda Sanders DEPT.: CX-101 |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

| | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 9

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 19, 2020
 Jonathan Melmed
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Assigned for All Purposes

Judge Glenda Sanders

5 Attorneys for Plaintiff Stephen Marano, and the Putative Class

CX-101

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **FOR THE COUNTY OF ORANGE**

8
9 STEPHEN MARANO, on behalf of the
10 individual and all others similarly situated;

Case No.: 30-2020-01165807-CU-OE-CXC

CLASS ACTION COMPLAINT:

11 Plaintiff,

12 vs.

13 LIBERTY MUTUAL GROUP, INC., a
Massachusetts Corporation; and DOES 1
14 through 50, inclusive;

15 Defendants.

- 16 1. FAILURE TO PAY WAGES DUE,
INCLUDING MINIMUM WAGES (LAB.
CODE §§ 1194, 1194.2, 1197; IWC WAGE
ORDER)
- 17 2. FAILURE TO PAY OVERTIME WAGES
(LAB. CODE §§ 510 AND 1198)
- 18 3. FAILURE TO PROVIDE COMPLIANT
REST PERIODS TO AND/OR PAY
MISSED REST PERIOD PREMIUMS
(LAB. CODE § 226.7; IWC WAGE
ORDER)
- 19 4. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS TO AND/OR PAY
MISSED MEAL PERIOD PREMIUMS
(LAB. CODE §§ 226.7 AND 512; IWC
WAGE ORDER)
- 20 5. FAILURE TO REIMBURSE BUSINESS
EXPENSES (LAB. CODE § 2802)
- 21 6. UNLAWFUL DEDUCTIONS FROM
WAGES (LAB. CODE § 221)
- 22 7. FAILURE TO PROVIDE COMPLETE
AND ACCURATE WAGE
STATEMENTS (LAB. CODE § 226)
- 23 8. FAILURE TO TIMELY PAY WAGES
(LAB. CODE §§ 204 AND 210)
- 24 9. UNFAIR COMPETITION LAW
VIOLATIONS (BUS. & PROF. CODE §
25 17200, *et seq.*)

26 DEMAND FOR JURY TRIAL

27 **CLASS AND REPRESENTATIVE ACTION COMPLAINT**

1 Plaintiff Stephen Marano (“Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges of Defendant Liberty Mutual Group, Inc., and DOES 1 through 50, inclusive,
3 (referred to collectively as the “Defendants”) as follows.

4 **I. INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382
6 on behalf of Plaintiff and all other current and former similarly situated employees employed by
7 Defendant within the State of California.

8 2. Through this class action, Plaintiff seeks to represent the following Class Members:
9 *“all individuals who are or were employed by Defendants in California as Sales Representatives*
10 *and equivalent positions from four years prior to the filing of this Complaint through the date of*
11 *trial”* (the “Class Members”).

12 3. The “Class Period” as used herein, is defined as the period from four years prior to
13 the filing of this Complaint and continuing into the present and ongoing.

14 4. From at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have had a consistent policy of failing to pay all wages due, including
16 minimum wages and overtime wages; failing to authorize or permit compliant rest periods; failing
17 to pay missed rest period premiums; failing to provide compliant meal periods; failing to pay
18 missed meal period premiums; failing to reimburse business expenses; failing to issue accurate and
19 complete wage statements; failing to timely pay all wages owed; engaging in unlawful, unfair,
20 and/or fraudulent business practices; and deducting unlawfully from employee wages.

21 5. Plaintiff, individually and on behalf of all other similarly situated employees, seeks
22 all monies owed but withheld and retained by Defendants to which Plaintiff and the Class Members
23 are entitled.

24 **II. JURISDICTION AND VENUE**

25 6. This Court has subject matter jurisdiction over all causes of action asserted herein
26 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
27 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
28 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises

1 under the law of the State of California or is subject to adjudication in the courts of the State of
2 California.

3 7. This Court has personal jurisdiction over Defendants because each has caused
4 injuries in Orange County and the State of California through their acts, and by their violation of the
5 California Labor Code, California state common law, and California Business & Professions Code
6 sections 17200, *et seq.* Defendants also transact business throughout California and have obtained
7 the benefits of law of the United States in general and the State of California in particular, and are
8 therefore subject to the personal jurisdiction of this Court. Plaintiff is also informed and believes
9 and based thereon asserts that the principal place of business or “nerve center” of Defendants is
10 located in the State of California, County of Orange.

11 8. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
12 Procedure § 395(a). Defendants operate within California and do business within Orange County.
13 The unlawful acts alleged herein have a direct effect on Plaintiff and the Class Members within the
14 State of California and Orange County.

15 9. This case should be classified as complex according to California Rules of Court,
16 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
17 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
18 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
19 and would require substantial post judgment judicial supervision.

20 **III. PARTIES**

21 10. Plaintiff is a resident of Orange County, California. Plaintiff was employed by
22 Defendants during the Class Period as a Sales Representative or equivalent position.

23 11. Plaintiff seeks to represent a Class, as defined above.

24 12. Plaintiff and the Class Members are, and at all times pertinent hereto, have been
25 classified as employees by Defendants.

26 13. Plaintiff is informed and believes and thereon alleges that Defendant Liberty Mutual
27 Group, Inc., is a Massachusetts Corporation authorized to and doing business in Orange County,
28 California, with its principal place of business or “nerve center” located in the State of California,

1 County of Orange, and is and/or was the legal employer of Plaintiff and the Class Members
2 throughout the Class Period. Defendants also transact business throughout California and have
3 obtained the benefits of the laws of the United States in general and the State of California in
4 particular, and are therefore subject to the personal jurisdiction of this Court.

5 14. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
6 participation in the conduct herein alleged, of the defendants sued as DOES 1 through 20, inclusive,
7 but based upon information and belief Plaintiff alleges that the Doe defendants engaged in the
8 unlawful conduct alleged herein and are legally responsible for the damages alleged, and therefore
9 sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the
10 true names and capacities of the Doe defendants when ascertained.

11 15. Plaintiff is informed and believes and based thereon alleges all of the following:
12 There exists such a unity of interest and ownership between the Defendants that the individuality
13 and separateness of Defendants has ceased to exist. One of the Defendants completely dominates
14 and controls the other Defendants and is using those Defendants as a shield against personal
15 liability in order to perpetrate a fraud or accomplish a wrongful or inequitable purpose. The
16 Defendants commingle their assets and funds and are inadequately capitalized such that they are
17 unable to cover their liabilities, to the detriment of potential creditors such as Plaintiff. Defendants
18 share office space, employees, and/or equipment and materials. Defendants fail to maintain
19 adequate records to conduct their business(es). Thus, injustice will result unless the Defendants are
20 treated as alter egos of one another, any illusion of separateness is disregarded, and liability for the
21 acts alleged herein is imposed jointly and severally against all Defendants.

22 **IV. FACTUAL ALLEGATIONS**

23 16. Defendants operate, and throughout the Class Period operated, a business selling
24 various forms of insurance and resolving claims against their insurance throughout the State of
25 California.

26 17. Either throughout the entirety or during a portion of the Class Period, Plaintiff and
27 the Class Members were non-exempt employees of Defendants, employed as Sales Representatives
28 or in positions equivalent to that of a Sales Representative. Plaintiff is informed and believes and

1 based thereon alleges that throughout the Class Period, Plaintiff and the Class Members did not
2 hold any of the positions or engage in any of the job duties which might otherwise have caused
3 them to be deemed exempt employees under California law.

4 18. Throughout the Class Period, Plaintiff and the Class Members performed work on
5 behalf of Defendants in the State of California for some portion of time without being compensated
6 any amount for that work. Such unpaid work hours included periods during the Class Period during
7 which Plaintiff and the Class Members were not paid wages even though they were subject to the
8 control of Defendants and/or Defendants suffered or permitted them to work. This failure to pay
9 wages due was caused, at least in part, by Defendants' practice of not paying employees based on
10 their actual hours worked and instead unlawfully altering employee time records to reflect hours
11 worked in half-hour intervals and paying employees based upon such unlawfully altered and/or
12 unlawfully rounded time records. Specifically, throughout the Class Period, Defendants had a
13 practice of rounding the recorded work hours of Plaintiff and the Class Members to the hour or
14 half-hour and Plaintiff is informed and believes that this system of rounding was neither fair nor
15 neutral, and was instead systematically undercompensating employees.

16 19. Throughout the Class Period, Plaintiff and the Class Members typically performed
17 work on behalf of Defendants in the State of California for eight (8) or more hours each workday,
18 five or more days each workweek, for a total of forty (40) or more hours each workweek.

19 20. Throughout the Class Period, Plaintiff and the Class Members periodically worked
20 more than eight (8) hours in a workday, all seven days in a workweek, and/or more than forty (40)
21 hours in a workweek, but were not paid all appropriate overtime and double time wages for such
22 hours worked. In such instances throughout the Class Period, Plaintiff and the Class Members were
23 not paid at all for overtime hours, were paid less than one and one-half their regular rate of pay for
24 all such overtime hours, or were paid less than two times their regular rate of pay for all such
25 double time hours. This failure to pay wages due was caused, at least in part, by Defendants'
26 practice of not paying employees based on their actual hours worked and instead unlawfully
27 altering employee time records to reflect hours worked in half-hour intervals and paying employees
28 based upon such unlawfully altered time records. Additionally, Defendants miscalculated the

1 regular rate of pay, overtime rate of pay, and double time rate of pay when taking into account non-
2 hourly compensation for Plaintiff and the Class Members and/or did not calculate overtime and
3 doubletime on a weekly basis, as required by California law. Defendants also miscalculated the
4 number of overtime and double time hours worked by Plaintiff and the Class Members.

5 21. Throughout the Class Period, Plaintiff and the Class Members were not authorized
6 or permitted to take one or more duty-free rest periods of not less than ten (10) minutes for every
7 major fraction of four (4) hours worked. Additionally, even when they were permitted to take rest
8 periods, they were required to remain on-duty and/or charged with various tasks during rest periods.

9 22. Throughout the Class Period, Plaintiff and the Class Members were not paid any rest
10 period premium wages.

11 23. Throughout the Class Period, Plaintiff and the Class Members were not authorized
12 or permitted to take one or more duty-free meal periods of not less than thirty (30) minutes before
13 the end of their fifth hour worked and/or were not authorized or permitted to take one or more of
14 their second duty free meal periods of not less than thirty (30) minutes on workdays in which they
15 worked more than ten (10) hours. Due to Defendants' unlawful policies, Plaintiff and the Class
16 Members were regularly required to take late, on-duty, or interrupted meal periods, or forego them
17 entirely. Additionally, even when they were permitted to take meal periods, they were required to
18 remain on-duty and/or charged with various tasks during meal periods.

19 24. Throughout the Class Period, Plaintiff and the Class Members were not paid any
20 meal period premium wages.

21 25. Throughout the Class Period, Plaintiff and the Class Members incurred necessary
22 expenditures or losses in direct consequence of the discharge of their duties or their obedience to
23 the directions of Defendants and they were never reimbursed by Defendants for all such
24 expenditures or losses. These expenditures or losses included the use of their personal cell phones
25 and vehicles for work purposes and incurring expenses such as refueling vehicles after completing
26 business-related driving tasks. Defendants require Plaintiff and the Class Members to shoulder the
27 cost associated with Defendants' business.

28 26. Defendants do not maintain an expense reimbursement policy and/or practice stating

1 that Defendants will affirmatively reimburse Plaintiff and the Class Members for a reasonable
2 portion of their monthly personal cell phone bills and other expenses necessarily incurred in their
3 discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th
4 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for
5 work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
6 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
7 owed is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification in
8 cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar*
9 *v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for
10 partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield*
11 *of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying
12 class of cell phone reimbursement claim and adopting the logic of *Cochran*). To the contrary,
13 although Plaintiff and the Class Members used their personal cell phones and vehicles for necessary
14 work-related purposes to perform their job duties with the knowledge of and/or acquiescence of
15 Defendants, Defendants did not reimburse Plaintiff and the Class Members in any amount for any
16 such expenses incurred throughout the Class Period.

17 27. Throughout the Class Period, Plaintiff and the Class Members had amounts deducted
18 from their wages by Defendants which were not authorized by law or by them. Throughout the
19 Class Period, Plaintiff and the Class Members only ever consented to those deductions from wages
20 which were allowed by law or expressly authorized by them and did not consent to any additional
21 deductions from wages. Nonetheless, Defendants deducted additional amounts from wages due.

22 28. Throughout the Class Period, Plaintiff and the Class Members were issued wage
23 statements by Defendants which knowingly and intentionally did not reflect all of the complete and
24 accurate information required by Labor Code section 226. Specifically, Defendants’ wage
25 statements failed to state the correct amount of gross wages earned, total hours worked, all
26 deductions, net wages earned, and/or the applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate. As a result, throughout the Class
28 Period Defendants failed to keep, at a central location in the state or at the plants or establishments

1 at which employees are employed, payroll records showing the hours worked daily by and the
2 wages paid to employees employed at the respective plants or establishments.

3 29. Labor Code section 204 expressly requires employers who pay employees on a
4 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
5 following the close of the payroll period.” Due to Defendants’ failure throughout the Class Period
6 to pay to Plaintiff and the Class Members all wages due, as described above, Defendants failed to
7 timely pay their employees within seven calendar days following the close of payroll in accordance
8 with Labor Code section 204 on a regular and consistent basis.

9 30. Throughout the Class Period and with regard to Plaintiff and the Class Members,
10 Defendants engaged in the unlawful, unfair, and/or fraudulent business practices described in this
11 Complaint. Defendants engaged in such business practices to minimize the amounts paid to
12 employees, increase Defendants’ profits, and gain advantage over competitors who acted lawfully.

13 **V. CLASS ACTION ALLEGATIONS**

14 31. Through this class action, Plaintiff seeks to represent the following Class Members:
15 “all individuals who are or were employed by Defendants in California as Sales Representatives
16 and equivalent positions from four years prior to the filing of this Complaint through the date of
17 trial” (the “Class Members”).

18 32. Plaintiff brings this action individually and on behalf of all others similarly situated
19 as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent the
20 Class Members throughout the Class Period.

21 33. Plaintiff reserves the right to amend or modify the class and subclass descriptions
22 with greater specificity or further division into subclasses or limitation to particular issues as
23 appropriate.

24 34. Plaintiff, as Class Representative, is a Class Member for the class which Plaintiff
25 seeks to represent.

26 35. This action has been brought and may properly be maintained as a class action under
27 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
28 litigation and the proposed Class is easily ascertainable from Defendants’ personnel and payroll.

1 records.

2 36. **Numerosity:** The potential members of the Class as defined are so numerous that a
3 joinder of all Class Members is impracticable. Although the exact number is currently unknown to
4 Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

5 37. **Commonality:** There are questions of law and fact common to the class which
6 predominate over any questions affecting only individual members of the Class, including without
7 limitation:

8 i. Whether Defendants violated Labor Code sections 1194, 1194.2, 1197,
9 1197.1, and the relevant IWC Wage Order by failing to pay appropriate wages to Plaintiff and Class
10 Members for all hours worked, including minimum wage;

11 ii. Whether Defendants violated Labor Code sections 510 and 1198 and the
12 relevant IWC Wage Order by failing to pay appropriate wages to Plaintiff and Class Members for
13 all overtime hours worked;

14 iii. Whether Defendants violated the California Labor Code and the IWC Wage
15 Order by failing to authorize or permit compliant rest periods to Plaintiff and the Class Members
16 and whether Defendants failed to compensate Plaintiff and the Class Members with one additional
17 hour of premium pay for each instance when a compliant rest period was not provided;

18 iv. Whether Defendants violated the California Labor Code and the IWC Wage
19 Order by failing to provide compliant meal periods to Plaintiff and the Class Members and whether
20 Defendants failed to compensate Plaintiff and the Class Members with one additional hour of
21 premium pay for each instance when a compliant meal period was not provided;

22 v. Whether Defendants violated Labor Code section 2802 by failing to
23 reimburse all business expenses incurred by Plaintiff and the Class Members;

24 vi. Whether Defendants violated Labor Code section 221 by unlawfully
25 deducting amounts from the wages paid to Plaintiff and the Class Members;

26 vii. Whether Defendants violated Labor Code section 226 by failing to create and
27 maintain complete, accurate, itemized wage statements for Plaintiff and the Class Members;

28 viii. Whether Defendants failed to maintain complete and accurate employment

1 records for Plaintiff and the Class Members, in violation of Labor Code section 1174;

2 ix. Whether Defendants violated Business and Professions Code section 17200,
3 *et seq.*, with regard to Plaintiff and the Class Members by acting or failing to act as alleged in this
4 Complaint;

5 x. Whether Plaintiff and the Class Members are entitled to equitable relief
6 pursuant to Business and Professions Code section 17200, *et seq.*;

7 xi. Whether Plaintiff and the Class Members are entitled to costs and attorneys'
8 fees;

9 xii. Whether Plaintiff and the Class Members are entitled to interest; and

10 xiii. The proper formula(s) for calculating damages, restitution, and interest owed
11 to Plaintiff and the Class Members.

12 38. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims
13 of the Class Members. Plaintiff, like other Class Members, was subjected to Defendants' ongoing
14 Labor Code and Wage Order violations.

15 39. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and
16 adequately represent and protect the interests of the Class Members. Plaintiff's interests are not in
17 conflict with those of the Class Members. Plaintiff's counsel is competent and experienced in
18 litigating large employment class actions and other complex litigation matters, including cases like
19 this case.

20 40. **Superiority of Class Action.** Class certification is appropriate because a class action
21 is superior to other available means for the fair and efficient adjudication of this controversy.
22 Individual joinder of all Class Members is not practicable, and questions of law and fact common to
23 the Class predominate over any questions affecting only individual members of the Class. Each
24 Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal
25 policies and practices set forth above. Class action treatment will allow those similarly situated
26 persons to litigate their claims in the manner that is most efficient and economical for the parties
27 and the judicial system.

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FIRST CAUSE OF ACTION
FAILURE TO PAY WAGES DUE, INCLUDING MINIMUM WAGES
(Lab. Code §§ 1194, 1194.2, 1197, and 1197.1; IWC Wage Order)
Plaintiff and Class Members Against All Defendants

41. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

42. Labor Code sections 1182.12 and 1197 set the minimum wage for all industries and make it unlawful to pay less than the minimum wage.

43. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage..., including interest thereon, reasonable attorney's fees, and costs of suit.

44. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage 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.

45. As set forth above, throughout the Class Period Plaintiff and the Class Members were not paid all wages due, including at least minimum wage for all hours worked.

46. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Class Members were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

47. As a result of Defendants' wrongful conduct, Plaintiff and the Class Members have been damaged in amounts to be proven at trial.

48. Accordingly, pursuant to Labor Code section 1197.1, Plaintiff and the Class Members are entitled to recover all unpaid hourly wages due, including all minimum wages, plus liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld, as well as \$100 per underpaid employee for the first violative pay period and \$250 per underpaid employee for each subsequent violative pay period, regardless of whether the initial violation was intentionally committed.

1 49. Pursuant to Labor Code section 1194.2, Plaintiff is also entitled to recover interest,
2 costs, and attorneys' fees associated with this cause of action.

3 50. Plaintiff is informed and believes and thereon alleges that Defendants intentionally,
4 willfully, and improperly failed to pay wages to Plaintiff and the Class Members.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**

7 (Lab. Code §§ 510 and 1198)

8 *Plaintiff and Class Members Against All Defendants*

9 51. Plaintiff re-alleges and incorporates by reference the allegations contained in the
10 paragraphs above, as though fully set forth herein.

11 52. Labor Code section 510 requires an employer to compensate an employee who
12 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
13 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
14 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
15 compensate employees at no less than twice the regular rate of pay when an employee works more
16 than twelve (12) hours in one workday or more than eight (8) hours on the seventh consecutive
17 workday in a workweek.

18 53. Furthermore, pursuant to Labor Code section 1198, "[t]he maximum hours of work
19 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
20 and the standard conditions of labor for employees. The employment of any employee for longer
21 hours than those fixed by the order or under conditions of labor prohibited by the order is
22 unlawful."

23 54. Throughout the Class Period, Defendants were required to properly pay Plaintiff and
24 the Class Members for all overtime wages earned in accordance with California law.

25 55. Throughout the Class Period, Defendants failed to pay Plaintiff and the Class
26 Members all overtime wages owed and as a direct result of Defendants' unlawful acts Plaintiff and
27 the Class Members have been harmed in an amount to be shown according to proof at trial and
28 within the jurisdictional limitations of this Court.

56. Plaintiff seeks all available remedies for Defendants' violations including, but not

1 limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted
2 by law.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE COMPLIANT REST PERIODS TO AND/OR PAY MISSED**
5 **REST PERIOD PREMIUMS**

(Lab. Code § 226.7; IWC Wage Order)

Plaintiff and the Class Members Against All Defendants

6 57. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
7 in the preceding paragraphs.

8 58. California Labor Code § 226.7(a) provides, "No employer shall require any
9 employee to work during any meal or rest period mandated by an applicable order of the Industrial
10 Welfare Commission."

11 59. Section 12 of the relevant IWC Wage Order provides: "(A) Every employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
13 middle of each work period. The authorized rest period time shall be based on the total hours
14 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
15 thereof. However, a rest period need not be authorized for employees whose total daily work time is
16 less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours
17 worked for which there shall be no deduction from wages."

18 60. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order,
19 Defendants were obligated to pay Plaintiff and the Class Members one additional hour of pay at
20 their regular rate of compensation for each workday in which one or more compliant rest period
21 was not provided.

22 61. Throughout the Class Period, due to the demands of the job, Plaintiff and the Class
23 Members were not authorized or permitted to take ten-minute off-duty rest periods every four hours
24 of work or major fraction thereof. Additionally, even when they were permitted to take ten-minute
25 timely rest periods, they were not provided with off-duty rest periods as they were required to
26 remain on-duty and charged with various tasks during their rest periods. Despite this failure,
27 Defendants failed to ever pay a rest period premium wage.
28

1 62. Accordingly, Defendants are liable to Plaintiff and the Class Members for one hour
 2 of additional wages at those employees' regular rates of pay for each workday that one more
 3 compliant rest period was not lawfully provided, in an amount to be proven at time of trial.

4 63. Also, as a direct result of Defendants' violations of Labor Code sections 226.7 and
 5 the IWC Wage Order, Defendants are liable to Plaintiff and the Class Members for penalties,
 6 attorneys' fees, costs, and interest.

7 64. On information and belief, Plaintiff and the Class Members did not voluntarily or
 8 willfully waive any rest periods. Any expressed or implied waivers obtained from Plaintiff and the
 9 Class Members were not willfully obtained, were not voluntarily agreed to, were a condition of
 10 employment, or were a part of a contract of unlawful adhesion.

11 **FOURTH CAUSE OF ACTION**
 12 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS TO AND/OR PAY MISSED**
 13 **MEAL PERIOD PREMIUMS**
 (Lab. Code §§ 226.7 and 512; IWC Wage Order)
Plaintiff and the Class Members Against All Defendants

14 65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
 15 in the preceding paragraphs.

16 66. California Labor Code section 226.7(a) provides that "No employer shall require any
 17 employee to work during any meal or rest period mandated by an applicable order of the Industrial
 18 Welfare Commission."

19 67. Sections 11(A) and (B) of the relevant IWC Wage Order provide that:

20 "No employer shall employ any person for a work period of more than five
 21 (5) hours without a meal period of not less than 30 minutes, except that when
 22 a work period of not more than six (6) hours will complete the day's work the
 23 meal period may be waived by mutual consent of the employer and the
 24 employee...An employer may not employ an employee for a work period of
 25 more than ten (10) hours per day without providing the employee with a
 26 second meal period of not less than 30 minutes, except that if the total hours
 worked is no more than 12 hours, the second meal period may be waived by
 mutual consent of the employer and the employee only if the first meal period
 was not waived.

27 68. Section 11(C) of the relevant IWC Wage Order provides that:

28

1 Unless the employee is relieved of all duty during a 30-minute meal period,
2 the meal period shall be considered an on duty meal period and counted as
3 time worked. An on duty meal period shall be permitted only when the nature
4 of the work prevents an employee from being relieved of all duty and when
5 by written agreement between the parties an on-the-job paid meal period is
6 agreed to. The written agreement shall state that the employee may, in
7 writing, revoke the agreement at any time.

69. Finally, Section 11(D) of the relevant IWC Wage Order provides that:

8 If an employer fails to provide an employee a meal period in accordance with
9 the applicable provisions of this order, the employer shall pay the employee
10 one (1) hour of pay at the employee's regular rate of compensation for each
11 workday that the meal period is not provided.

70. Labor Code section 512 imposes essentially the same requirements as the IWC
12 Wage Order.

71. As alleged herein, by failing to provide Plaintiff and the Class Members with off-
13 duty meal periods, Defendants violated California Labor Code sections 226.7 and 512, as well as
14 the relevant IWC Wage Order.

72. Accordingly, Defendants are liable to Plaintiff and the Class Members for one hour
15 of additional wages at those employees' regular rates of pay for each workday that one more
16 compliant meal period was not lawfully provided, in an amount to be proven at time of trial.

73. Also, as a direct result of Defendants' violations, Defendants are liable to Plaintiff
17 and the Class Members for penalties, attorneys' fees, costs, and interest.

74. On information and belief, Plaintiff and the Class Members did not voluntarily or
18 willfully waive any meal periods. Any expressed or implied waivers obtained from Plaintiff and the
19 Class Members were not willfully obtained, were not voluntarily agreed to, were a condition of
20 employment, or were a part of a contract of unlawful adhesion.

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23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 (Lab. Code § 2802)
26 *Plaintiff and the Class Members Against All Defendants*

75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

1 76. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties.” “Necessary” business expenses are defined to include all
4 “reasonable expenses.” (See Labor Code § 2802 (c).)

5 77. Plaintiff and the Class Members are entitled to reimbursement for expenses
6 incurred during the course of their duties. The duty to reimburse even extends to the use of
7 equipment the employee may already own and would be required to pay for anyway. *See Cochran*
8 *v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 (“The threshold question in this
9 case is this: Does an employer always have to reimburse an employee for the reasonable expense
10 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the
11 situation in which the employee incurred an extra expense that he or she would not have otherwise
12 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the
13 employer would receive a windfall because it would be passing its operating expenses on to the
14 employee.”) After all, the purpose of Section 2802 is to “prevent employers from passing along
15 their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42
16 Cal. 4th 554, 562.

17 78. Throughout the Class Period, Defendants regularly failed to reimburse the business
18 expenses of Plaintiff and the Class Members, including expenses incurred for use of their personal
19 telephones and vehicles in connection with completing tasks assigned by Defendants.

20 79. Plaintiff and the Class Members are entitled to reimbursement of these necessary
21 expenditures or losses, plus interest, attorneys’ fees, and costs, pursuant to Labor Code section
22 2802.

SIXTH CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM WAGES
(Lab. Code § 221)
Plaintiff and the Class Members Against All Defendants

26 80. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 81. Labor Code section 221 states “It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 Labor Code section 225 further states that violation of Section 221 is a misdemeanor. (*See also*
3 *Hudgins v. Neiman Marcus Group, Inc.*, 34 Cal.App.4th 1109 (1995); *Phillips v. Gemini Moving*
4 *Specialists*, 63 Cal.App.4th 563 (1998); *Quillian v. Lion Oil Co.*, 96 Cal.App.3d 156 (1979).)

5 82. Throughout the Class Period, Defendants repeatedly deducted from Plaintiff and
6 the Class Members amounts in excess of those allowed by law or with the express authorization of
7 Plaintiff and the Class Members.

8 83. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members are
9 entitled to restitution of any and all unlawfully deducted wages, as well as interest from the date
10 said amounts were due and attorneys’ fees and costs pursuant to Labor Code section 218.5.

11 **SEVENTH CAUSE OF ACTION**
12 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS**

(Lab. Code § 226)

13 *Plaintiff and the Class Members Against All Defendants*

14 84. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 85. The actionable period for this cause of action is one year prior to the filing of this
17 Complaint through the present, and on-going until the violations are corrected, or the class is
18 certified.

19 86. Section 226(a) of the California Labor Code provides, in relevant part:

20 Every employer shall...furnish each of his or her employees...an accurate
21 itemized statement in writing showing (1) gross wages earned, (2) total hours
22 worked by the employee, except for any employee whose compensation is solely
23 based on a salary who is exempt from payment of overtime under subdivision (a)
24 of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
25 the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis, (4) all deductions, provided that all –
27 deductions made on written orders of the employee may be aggregated and shown
28 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
the employee is paid, (7) the name of the employee and only the last four digits of
his or her social security number or an employee identification number other than
a social security number, (8) the name and address of the legal entity that is the
employer and...(9) all applicable hourly rates in effect during the pay period and
the corresponding number of hours worked at each hourly rate by the employee...

1 87. As set forth above, Defendants repeatedly issued wage statements to Plaintiff which
2 were incomplete and inaccurate, including failing to include information required under Labor Code
3 Section 226(a).

4 88. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
5 and intentional.

6 89. As a result of Defendants' issuance of incomplete or inaccurate itemized wage
7 statements, Plaintiff and the Class Members are each entitled to recover from Defendants an initial
8 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
9 penalty of \$4,000 per Class Member, pursuant to Labor Code section 226(e), plus costs and
10 reasonable attorneys' fees.

11 **EIGHTH CAUSE OF ACTION**
12 **FAILURE TO TIMELY PAY WAGES**

(Lab. Code §§ 204 and 210)

13 *Plaintiff and the Class Members Against All Defendants*

14 90. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 91. Labor Code section 200 provides that "wages' include all amounts for labor
17 performed by employees of every description, whether the amount is fixed or ascertained by the
18 standard of time, task, pieces, commission basis, or other method of calculation."

19 92. Labor Code section 204 mandates that essentially all wages earned in any
20 employment are due and payable at least twice per calendar month, whether weekly, biweekly, or
21 semimonthly. Wages must be paid within a fixed number of days following the close of the
22 payroll period, with that number not exceeding 11 days. This Section also allows employers to
23 issue corrected wage statements to employees and to regard those wage statements as being
24 compliant with Labor Code section 226(a), but only if such corrected wage statements are issued
25 by the close of the next regular pay period.

26 93. Labor Code section 210 creates a private right of action for an individual employee
27 to recover civil penalties against their employer for violation of specified Sections of the Labor
28 Code, including Section 204. This penalty is one hundred dollars (\$100) for an initial violation

1 and two hundred dollars (\$200) plus 25 percent of the amount unlawfully withheld for each
2 subsequent violation or any willful or intentional violation.

3 94. As discussed in detail above, Defendants failed to ever pay Plaintiff and the Class
4 Members all wages due. As a result, Defendants have failed to pay wages in a timely manner, as
5 required by Labor Code section 204 and Defendants owe Plaintiff and the Class Members
6 penalties, attorneys' fees, and costs, in accordance with Labor Code section 210.

7 **NINTH CAUSE OF ACTION**
8 **UNFAIR COMPETITION LAW VIOLATIONS**
9 (Bus. & Prof. Code § 17200, *et seq.*)
Plaintiff and the Class Members Against All Defendants

10 95. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
11 in the preceding paragraphs.

12 96. Business and Professions Code section 17200, *et seq.*, ("UCL") prohibits any
13 unlawful, unfair, or fraudulent business practices. Business and Professions Code section 17204
14 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a
15 civil action for violation of the UCL. Such a person may bring such an action on behalf of themself
16 and others similarly situated who are affected by the unlawful, unfair, or fraudulent business
17 practice.

18 97. Under section 17208 of the California Business and Professions Code, the statute of
19 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
20 this cause of action is four years prior to the filing of this Complaint through the present.

21 98. Labor Code section 90.5(a) states that it is the public policy of California to
22 vigorously enforce minimum labor standards in order to ensure employees are not required to work
23 under substandard and unlawful conditions, and to protect employers who comply with the law
24 from those who attempt to gain competitive advantage at the expense of their workers by failing to
25 comply with minimum labor standards.

26 99. Throughout the Class Period, Defendants did not pay Plaintiff and the Class
27 Members all wages due, did not reimburse all business expenses, and unlawfully deducted wages.

28 100. As a direct and proximate result of Defendants' unlawful business practices, as

1 described above, Plaintiff and the Class Members suffered economic injuries and Defendants
2 profited from their unlawful, unfair, and/or fraudulent acts and practices.

3 101. Plaintiff and the Class Members are entitled to monetary relief pursuant to Business
4 and Professions Code sections 17203 and 17208 for all unpaid wages due and interest thereon.
5 Defendants should be required to disgorge all the profits and gains they have reaped and restore
6 such profits and gains to those from whom they were unlawfully taken.

7 102. Defendants' violations and its scheme to lower its payroll costs as alleged herein,
8 constitute unlawful and unfair business practices because they were committed in a systematic
9 manner over a period of time to the detriment of Plaintiff and the Class Members.

10 103. Through the actions alleged above, Defendants engaged in substantially injurious
11 unfair competition within the meaning of UCL because Defendants' conduct wrongfully denied
12 Plaintiff and the Class Members their wages due.

13 104. Plaintiff and the Class Members success in this action will enforce important rights
14 affecting the public interest by bringing to light Defendants' violations of the rights of its
15 employees and by exposing evidence of Defendants' unlawful practices, to the benefit of
16 Defendants' other employees and future litigants pursuing claims against Defendants. Plaintiff and
17 the Class Members will incur a financial burden in pursuing this action in the public interest.
18 Therefore, awards of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil
19 Procedure §1021.5 and Labor Code Section 1194.

20 105. Moreover, because this action seeks recovery of unpaid wages, the Court should
21 award reasonable attorneys' fees and costs, pursuant to Labor Code section 218.5.

22 106. Plaintiff and the Class Members are further entitled to and do seek a declaration that
23 the above described business practices were unlawful, unfair, and/or fraudulent, and seek an
24 injunction restraining Defendants from engaging in any of the above-described unlawful, unfair,
25 and/or fraudulent business practices in the future.

26 **VII. PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for the following relief:

28 1. For an order certifying this action as a class action;

1 2. For compensatory damages in the amount of the unpaid wages owed to Plaintiff
2 and the Class Members, including minimum wages and overtime wages, as may be proven;

3 3. For liquidated damages in an amount equal to the wages unlawfully unpaid
4 and interest thereon, as may be proven;

5 4. For compensatory damages in the amount of the regular rate of compensation made
6 by Plaintiff and the Class Members for each day of noncompliant rest periods for which premium
7 pay was not properly paid, as may be proven;

8 5. For compensatory damages in the amount of the regular rate of compensation made
9 by Plaintiff and the Class Members for each day of noncompliant meal periods for which premium
10 pay was not properly paid, as may be proven;

11 6. For all unreimbursed business expenses, and interest thereon, that they are
12 owed, pursuant to Labor Code section 2802, and attorneys' fees and costs, pursuant to Labor
13 Code section 2802(c);

14 7. For compensatory damages in the amount of unlawfully deducted wages, as
15 may be proven;

16 8. For actual damages and/or penalties pursuant to Labor Code sections 204, 210,
17 and 1197.1 for Plaintiff and the Class Members, as may be proven;

18 9. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
19 Plaintiff and the Class Members, as may be proven;

20 10. For restitution of unpaid wages, pursuant to Business & Professions Code section
21 17200, *et seq.*, including disgorgement of profits, as may be proven;

22 11. For an order enjoining Defendants and its agents, servants, and employees, and all
23 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
24 described in this complaint;

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

26 13. For an award of all other civil and statutory penalties;

27 14. For an award providing for the payment of the costs of this suit;

28 15. For an award of attorneys' fees, to the extent provided by law; and

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16. For such other and further relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of all claims by jury, to the extent authorized by law.

Dated: October 19, 2020

MELMED LAW GROUP, P.C.

By: Jonathan Melmed
Jonathan Melmed, Esq.
Attorneys for Plaintiff and the Putative Class

| | | | | |
|---|---------------|-------|-----------|--|
| Attorney or Party without Attorney: Jonathan Melmed (CA Bar No. 290218) MELMED LAW GROUP P.C. 1801 Century Park East, Suite 850 Los Angeles, California 90067, Telephone No: 310-824-3828 Attorney For: Plaintiff | | | | For Court Use Only |
| Ref. No. or File No.: | | | | |
| Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE | | | | |
| Plaintiff: STEPHEN MARANO, on behalf of the individual and all others similarly situated Defendant: LIBERTY MUTUAL GROUP, INC., a Massachusetts Corporation | | | | |
| PROOF OF SERVICE SUMMONS | Hearing Date: | Time: | Dept/Div: | Case Number: 30-2020-01165807-CU-OE-CXC |

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons; Class Action Complaint; Civil Case Cover Sheet
3.
 - a. Party served: LIBERTY MUTUAL GROUP, INC., a Massachusetts Corporation
 - b. Person served: Susie Vang, CSC Lawyers Incorporating Service, Registered Agent
4. Address where the party was served: 2710 Gateway Oaks Dr, Suite 150N, Sacramento, CA 95833
5. I served the party:
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): Fri, Oct 23 2020 (2) at (time): 11:05 AM
 - (1) (business)
 - (2) (home)
 - (3) (other):
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 - a. as an individual defendant.
 - b. as the person sued under the fictitious name of (specify):
 - c. as occupant.
 - d. On behalf of (specify): LIBERTY MUTUAL GROUP, INC., a Massachusetts Corporation under the following Code of Civil Procedure section:

| | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| <input type="checkbox"/> other: | |



| | | | | |
|---|---------------|-------|-----------|--|
| Attorney or Party without Attorney: Jonathan Melmed (CA Bar No. 290218) MELMED LAW GROUP P.C. 1801 Century Park East, Suite 850 Los Angeles, California 90067, Telephone No: 310-824-3828 Attorney For: Plaintiff | | | | For Court Use Only |
| Ref. No. or File No.: | | | | |
| Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE | | | | |
| Plaintiff: STEPHEN MARANO, on behalf of the individual and all others similarly situated Defendant: LIBERTY MUTUAL GROUP, INC., a Massachusetts Corporation | | | | |
| PROOF OF SERVICE SUMMONS | Hearing Date: | Time: | Dept/Div: | Case Number: 30-2020-01165807-CU-OE-CXC |

Recoverable cost Per CCP 1033.5(a)(4)(B)

7. Person who served papers

- a. Name: Michael Morris
- b. Address: **FIRST LEGAL**
1517 W. Beverly Blvd.
LOS ANGELES, CA 90026
- c. Telephone number: (213) 250-1111
- d. The fee for service was: \$72.50
- e. I am:
 - (1) not a registered California process server.
 - (2) exempt from registration under Business and Professions Code section 22350(b).
 - (3) a registered California process server:
 - (i) owner employee independent contractor
 - (ii) Registration No: 2102-33
 - (iii) County: Sacramento

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/26/2020

(Date)



Michael Morris



Exhibit B

1 Katherine A. Roberts (SBN 259486)
kate.roberts@sidley.com
2 Beth Anne Scheel (SBN 202064)
bscheel@sidley.com
3 Abigail Hudson (SBN 327632)
abigail.hudson@sidley.com
4 SIDLEY AUSTIN LLP
555 West Fifth Street
5 Los Angeles, CA 90013
Telephone: (213) 896-6000
6 Facsimile: (213) 896-6600

7 Attorneys for Defendants
LIBERTY MUTUAL GROUP INC.
8

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

11 STEPHEN MARANO, on behalf of the individual
and all others similarly situated;
12
13 Plaintiff,
14
15 vs.
16 LIBERTY MUTUAL GROUP, INC., a
Massachusetts Corporation; and DOES 1 through
50, inclusive;
17
18 Defendants.

Case No. 30-2020-01165807-CU-OE-CXC
ANSWER TO COMPLAINT
Assigned to: Judge Glenda Sanders
Department: C17
Complaint Filed: October 19, 2020

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1 Defendant Liberty Mutual Group Inc. (“Defendant”) on behalf of itself and no other, hereby
2 answers the Complaint filed by Plaintiff Stephen Marano (“Plaintiff”) and denies and avers as
3 follows:

4 **GENERAL DENIAL**

5 Pursuant to the provisions of Section 431.20 of the California Code of Civil Procedure,
6 Defendant generally denies all the allegations of Plaintiff’s unverified Complaint (“Complaint”), and
7 further denies that Plaintiff has been damaged in any amount, or at all. Defendant also specifically
8 denies that it is liable to Plaintiff, or any member of the purposed class asserted, for the sum or sums
9 alleged or for any other amount whatsoever.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 (Failure to State a Claim)

13 1. The Complaint, and each and every purported cause of action alleged therein,
14 fails to state facts sufficient to constitute a cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 (Statute of Limitations)

17 2. The Complaint, and each purported cause of action alleged therein, is barred
18 by applicable statutes of limitations, including but not limited to, Labor Code §§ 203, 226 and 2698,
19 *et seq.*; Business and Professions Code § 17208, and Code of Civil Procedure §§ 338, 340, and 343.

20 **THIRD AFFIRMATIVE DEFENSE**

21 (Lack of Standing)

22 3. Plaintiff lacks standing to assert the Complaint or any purported claim for
23 relief alleged therein on behalf of himself or others.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Failure to Exhaust Administrative Remedies)

26 4. The Complaint, and each purported cause of action alleged therein, is barred
27 because Plaintiff and/or putative class members failed to exhaust their administrative remedies.
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FIFTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction Doctrine)

5. The Complaint, and each purported cause of action alleged therein, should be abated in the Court’s discretion, and Plaintiff and/or putative class members must pursue their administrative remedies with the California Division of Labor Standards Enforcement, which has primary jurisdiction over the claims.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. Defendant is informed and believes and based upon such information and belief alleges that the Complaint, and each purported cause of action therein, is barred by the doctrine of unclean hands, because among other things, Plaintiff’s causes of action are barred, in whole or in part, by misrepresentations made by Plaintiff and/or putative class members.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

7. Defendant is informed and believes and based upon such information and belief alleges that the Complaint, and each and every claim therein, is barred by the doctrine of laches, in that Plaintiff and/or putative class members unreasonably delayed in bringing the action.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

8. Defendant is informed and believes and based upon such information and belief alleges that Plaintiff’s claims are barred for the reason that, by his actions, Plaintiff and putative class members are estopped from bringing any cause of action.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

9. Defendant is informed and believes and based upon such information and belief alleges that, by his conduct, Plaintiff and putative class members have waived some or all of the causes of action asserted in the Complaint.

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TENTH AFFIRMATIVE DEFENSE

(Consent)

10. Defendant is informed and believes and based upon such information and belief alleges that Plaintiff’s claims against Defendant are barred, in whole or in part, because any alleged actions made by Defendant were consented to by Plaintiff and/or putative class members.

ELEVENTH AFFIRMATIVE DEFENSE

(Justification and Privilege)

11. Defendant is not liable for any alleged violation of California Business and Professions Code Section 17200, *et seq.* because its actions, conduct and dealings with its employees were lawful, and were carried out in good faith and for legitimate business purposes.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Actual Injury)

12. Plaintiff’s cause of action claiming unfair business practices in violation of California Business and Professions Code Sections 17200, *et seq.* is barred because Plaintiff and putative class members did not suffer actual injury.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Loss/No Unjust Enrichment)

13. Plaintiff has not suffered any loss and Defendant has not been unjustly enriched as a result of any action or inaction of Defendant or its agents. Hence, Plaintiff and putative class members are not entitled to any restitution.

FOURTEENTH AFFIRMATIVE DEFENSE

(Set-Off/Offset/Recoupment)

14. Some or all of the purported causes of action in the Complaint are subject to setoff, offset and/or recoupment.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

15. Plaintiff and/or putative class members failed to mitigate their purported damages, if any, and to the extent of that failure to mitigate, their claims are barred.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Irreparable Injury)

16. Plaintiff and putative class members are not entitled to injunctive relief because will not suffer any irreparable injury if injunctive relief is denied.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Specificity)

17. Plaintiff’s claims for unfair competition in violation of California Business and Professions Code Sections 17200, *et seq.*, are barred because they fail to plead specific facts capable of stating a claim for violation of the unfair competition act.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Adequacy of Remedy at Law)

18. Plaintiff’s claims for equitable relief fail because Plaintiff and/or putative class members may pursue adequate legal remedies.

NINETEENTH AFFIRMATIVE DEFENSE

(No Authorization or Ratification)

19. Defendant did not authorize or ratify any unlawful conduct.

TWENTIETH AFFIRMATIVE DEFENSE

(Inequitable Conduct by Plaintiff)

20. Plaintiff and putative class members have engaged in inequitable conduct with respect to the matters alleged in the Complaint and are therefore barred from recovering any relief for any alleged violation of California Business & Professions Code section 17200 *et seq.*, or for any other purported cause of action in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Putative Members Not Similarly Situated)

21. The purported “other similarly situated employees” are not similarly situated. Accordingly, this action may not properly be brought on behalf of the purported “other similarly situated employees” or as a class, collective or representative action.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(Claims Barred by Res Judicata/Collateral Estoppel/Release)

22. Plaintiff's claims and/or the claims of some of those individuals he seeks to represent are barred, in whole or in part, due to res judicata, collateral estoppel, or by release of claims.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Non-Certifiable Class)

23. Defendant is informed and believes and based upon such information and belief alleges, that the Complaint does not state facts sufficient to certify a class pursuant to California Code of Civil Procedure Section 382. Accordingly, this action is not properly brought as a class action.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Inadequacy of Class Representative)

24. Defendant is informed and believes and based upon such information and belief alleges, that Plaintiff is not a proper representative of the putative class he purports to represent and, accordingly, these action are not properly brought as class action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Settlement and Release)

25. Some or all of the purported causes of action in the Complaint are subject to the doctrine of settlement and release.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Knowledge)

26. Plaintiff and putative class members cannot recover on their claims under the Labor Code because, to the extent Plaintiff and/or putative class members were not reimbursed for all reasonably necessary business expenditures or paid for all hours worked, Defendant neither knew nor should have known that Plaintiff and/or putative class members incurred such expenditures or worked such hours.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Unconstitutionality of Penalties)

27. An award of penalties in this action would be punitive in nature and would therefore violate Defendant’s constitutional rights under the U.S. and California Constitutions.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Bankruptcy)

28. The claims of Plaintiff and putative class members are barred to the extent they file or have filed for, and fails or failed to identify their claims in, bankruptcy.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(De Minimis)

29. The claims of Plaintiff and putative class members are nonactionable to the extent the amount of allegedly compensable time they seek to recover for the activities described in the Complaint is de minimis, and therefore Plaintiff and putative class members are not entitled to compensation for such activities.

THIRTIETH AFFIRMATIVE DEFENSE

(Good Faith Defense)

30. At all relevant times, Defendant acted in good faith, with honesty of purpose and without any willful intentions to withhold payment.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Damages Too Speculative)

31. Plaintiff and putative class members cannot recover any of the damages alleged in the Complaint because such damages, if any, are too speculative to be recoverable at law.

ATTORNEYS’ FEES

As a consequence of Plaintiff bringing or maintaining this action, Defendant has been required to retain attorneys to defend itself, and Defendant is entitled to recover its attorneys’ fees incurred herein.

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RESERVATION OF RIGHT TO AMEND ANSWER


Defendant hereby gives notice that it intends to rely on such other and further defenses as may become available during discovery in this action and reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, Defendant prays as follows:

- 1. That Plaintiff takes nothing by his Complaint and that the Complaint be dismissed with prejudice;
- 2. That Plaintiff’s prayer for relief be denied;
- 3. That Defendant be awarded its attorneys’ fees and costs of suit incurred herein; and
- 4. That the Court award such further relief as it deems just and proper.

Date: November 18, 2020

SIDLEY AUSTIN LLP

By: 
Katherine A. Roberts
Beth Anne Scheel
Abigail Hudson

Attorneys for Defendant

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Los Angeles, CA 90013.

On November 18, 2020, I served the foregoing document(s) described as **ANSWER TO COMPLAINT** on all interested parties in this action as follows:

Jonathan Melmed
MELMED LAW GROUP P.C.
jm@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Telephone: (310) 824-3828
Facsimile: (310) 862-6851

Attorneys for Plaintiff Stephen Marano, and the Putative Class

(VIA U.S. MAIL) I served the foregoing document(s) by U.S. Mail, as follows: I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. I am readily familiar with Sidley Austin LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2020, at Los Angeles, California.


Haruka Hirano

1 Katherine A. Roberts (SBN 259486)
kate.roberts@sidley.com
2 Beth Anne Scheel (SBN 202064)
bscheel@sidley.com
3 Abigail Hudson (SBN 327632)
abigail.hudson@sidley.com
4 SIDLEY AUSTIN LLP
555 West Fifth Street
5 Los Angeles, CA 90013
Telephone: +1 213 896 6000
6 Facsimile: +1 213 896 6600

7 Attorneys for Defendant
Liberty Mutual Group Inc.

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

10 STEPHEN MARANO, on behalf of the
11 individual and all others similarly
situated;

12 Plaintiff,

13 vs.

14 LIBERTY MUTUAL GROUP, INC.,
15 and DOES 1 through 50, inclusive,

16 Defendants.

) Case No. 8:20-cv-2215

) **DECLARATION OF SERENA
WANNEMACHER IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL**

) State Action Filed: October 19, 2020
) State Action Served: October 23, 2020

DECLARATION OF SERENA WANNEMACHER

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I, Serena Wannemacher, declare as follows:

1. I am a Manager I, Business Analyst for Liberty Mutual Group Inc. (“Liberty Mutual”), the Defendant in this Action.
2. In connection with making this Declaration, I have reviewed records compiled, maintained, and relied on in the normal course of business by Liberty Mutual and its subsidiaries and affiliates (collectively referred to as the “Company”), and to which I have access in my role as a Manager I, Business Analyst. Those records include electronic data housed in the Company’s human resource information systems, which contain information regarding employees in California and which are maintained and relied on by the Company in the ordinary course of business. Based on my review of the Company’s records and other information obtained from the Company’s payroll and compensation department, I have personal knowledge of the facts set forth in this Declaration and if called and sworn as a witness, I could and would competently testify thereto.
3. I am familiar with the corporate status of Liberty Mutual. More specifically, Liberty Mutual is incorporated in Massachusetts and has its principal place of business in that state.
4. I understand that Plaintiff Stephen Marano (“Plaintiff”) filed a complaint (“Complaint”) against Liberty Mutual in Orange County Superior Court on October 19, 2020. The Case number assigned to that case is 30-2020-01165807-CU-OE-CXC.
5. The Complaint contains the following class definition:

All individuals who are or were employed by Defendants in California as Sales Representatives and equivalent positions from four years prior to the filing of this Complaint through the date of trial.

1 6. I am informed that the longest statute of limitations applicable to a claim
2 in the Complaint is four (4) years from the date the Complaint was filed. Therefore, I
3 reviewed the records for all employees who worked for the Company on or after
4 October 19, 2016.

5 7. Based on my review of the Company's records, and using information
6 obtained from the Company's payroll and compensation department, I have
7 determined that 175 individuals are within the scope of the class definition in the
8 Complaint.

9 8. The Complaint contains the following nine (9) causes of action:

- 10 a. Failure to Pay Wages Due, Including Minimum Wages
- 11 b. Failure to Pay Overtime Wages
- 12 c. Failure to Provide Compliant Rest Periods
- 13 d. Failure to Provide Compliant Meal Periods
- 14 e. Failure to Reimburse Business Expenses
- 15 f. Unlawful Deductions From Wages
- 16 g. Failure to Provide Complete and Accurate Wage Statements
- 17 h. Failure to Timely Pay Wages
- 18 i. Unfair Competition Law Violations (Business & Professions Code
19 Section 17200 *et seq.*)

20 9. By reviewing the Company's records, I am able to determine the relevant
21 employment periods (weeks in class positions) and rates of pay for individuals
22 encompassed by the class definition in the Complaint. Using this information, I am
23 able to make a reasonable estimate of the damages sought in the Complaint. To do so,
24 I have determined the average hourly base wage for the alleged class is \$15.35 and
25 have assumed that (i) any unpaid overtime hours would be compensated at 1.5 times
26 the employee's base rate of pay (\$23.03, assuming a base rate of \$15.35) and (ii) any
27 meal or rest period violations would be compensated at the rate of one hour at the
28 employee's base rate of pay (maximum of one meal period and one rest period
payment per day). This materially underestimates the alleged damages in this case
because it does not take into consideration sales commissions and bonuses that would
factor into the regular rate for purposes of overtime. Based on the Company's payroll

1 records, the total amount of regular (base) wages paid to the proposed class is
2 approximate \$14.2 million, whereas the sales bonuses paid to the same group during
3 the same time frame was approximately \$38.5 million.

4 10. For the purpose of the analysis of the amount at issue in the Complaint, I
5 have assumed the following alleged violations for each person falling within the class
6 definition: (i) three (3) meal periods not provided per workweek, (ii) three (3) rest
7 periods not authorized and permitted per workweek, (iii) five (5) unpaid overtime
8 hours per workweek, and (iv) \$35 of unreimbursed cell phone expenses and \$35 of
9 unreimbursed vehicle expenses per month. The records I reviewed showed a total of
10 19,402 workweeks for the proposed class. Liberty Mutual pays its sales
11 representatives on a biweekly basis, so I have assumed 9,701 pay periods for the
12 proposed class. To calculate alleged Labor Code Section 226 penalties, I identified
13 the proposed class members who worked since October 19, 2019, determined the
14 number of pay periods they worked during that time period, and assigned penalties of
15 \$50 for the first pay period and \$100 for each subsequent pay period. I did the same
16 for alleged Labor Code Section 210 penalties, but used a rate of \$100 for the first pay
17 period and \$200 for each subsequent pay period.

18 11. My analysis is very conservative because it does not account for the
19 following: (i) double-time wages for certain overtime work, (ii) liquidated damages,
20 (iii) More than \$38.5 million in sales commissions and bonuses paid to proposed class
21 members that would be included in the regular rate for purposes of computing
22 overtime, (iv) the 25% of any unlawfully withheld wages alleged under Labor Code
23 Section 210, (v) restitution, or (vi) attorney's fees.

24 12. I applied the assumptions above to the people falling within the class
25 definition using their average base rate of pay during relevant period, which was
26 \$15.35 per hour, and the specific dates each person was employed in a position in the
27 alleged class. That allowed me to calculate alleged damages for each person in the
28 alleged class. That produced the following dollar values:

| <u>Category</u> | <u>Amount Alleged in Complaint</u> |
|---|------------------------------------|
| Overtime | \$2,233,655.25 |
| Meal Period Premiums | \$893,462.10 |
| Rest Period Premiums | \$893,462.10 |
| Wage Statement Penalties (Lab. Code Sec. 226) | \$225,950.00 |
| Business Expenses (Lab. Code Sec. 2802) | \$314,370.00 |
| Lab. Code Sec. 210 Penalties | \$451,900.00 |
| Total: | \$5,012,799.45 |

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this Declaration is being executed this 20th day of November, 2020, in the City and State of Newburyport, Massachusetts.


Serena Wannemacher

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Liberty Mutual Hit with Class Action Alleging Calif. Sales Reps Owed Unpaid Wages](#)
