

**SUMMONS
(CITACION JUDICIAL)**

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

HOME DEPOT U.S.A., INC, a Delaware corporation; and DOES 1 through 50, Inclusive,

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

NIKI NUNES, individually and on behalf of all persons similarly situated, (see attached)

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

2019 MAY 24 PM 2:55

ROSA JUNQUEIRO, CLERK

BY POLLY KHIEU
DEPUTY

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.

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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Joaquin Superior Court
180 E. Weber Avenue
Stockton, CA 95202

STR-CV-UOE-2019-6656

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: MAY 24 2019
(Fecha)

Clerk, by POLLY KHIEU, Deputy
(Secretario) (Adjunto)

ROSA JUNQUEIRO

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]

1 **JCL LAW FIRM, APC**
JEAN-CLAUDE LAPUYADE (STATE BAR #248676)
2 3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
3 TEL: (619) 599-8292
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4 **ZAKAY LAW GROUP, APLC**
SHANI O. ZAKAY (STATE BAR #277924)
5 5850 OBERLIN DRIVE, SUITE 230A
SAN DIEGO, CA 92121
6 TEL: (619) 255-9047
7 FAX: (858) 404-9203

8 Attorneys for Plaintiff

FILED
SUPERIOR COURT - STOCKTON
2019 MAY 24 PM 2:55
ROSA JUNQUEIRO, CLERK
BY POLLY KHIEU
DEPUTY

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

11 NIKI NUNES, individually and on behalf of
all persons similarly situated, CHRIS
12 SMITH, individually and on behalf of all
persons similarly situated, MITZI
13 WALLACE, individually and on behalf of all
persons similarly situated,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC, a Delaware
17 corporation; and DOES 1 through 50,
18 Inclusive,

19 Defendants.

STK-CV-~~106~~-2019-6656

COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq;*
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq;*
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

DEMAND FOR A JURY TRIAL

FILE BY FAX

1 Plaintiffs NIKI NUNES, CHRIS SMITH and MITZI WALLACE (collectively
2 “PLAINTIFFS”), individually on behalf of those similarly situated current and former Warehouse
3 Associates, allege based on information and belief, except for their own acts and knowledge which
4 are based on personal knowledge, the following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant HOME DEPOT U.S.A., INC., (“DEFENDANT”) is a Delaware
7 corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT owns and operates THE HOME DEPOT DISTRIBUTION
10 CENTER, located at 1400 E. Pescadero Avenue, Tracy, California 95304 (“TRACY
11 DISTRIBUTION CENTER”).

12 3. Plaintiff NIKI NUNES (“NUNES”), individually and on behalf of all those
13 similarly situated, is and was employed by DEFENDANTS, as an hourly, nonexempt, Warehouse
14 Associate at the TRACY DISTRIBUTION CENTER, entitled to non-discretionary flat sum
15 incentive awards, overtime pay and meal and rest periods from August 7, 2015 to the present.
16 DEFENDANTS also provided NUNES with a

17 4. Plaintiff CHRIS SMITH (“SMITH”) individually and on behalf of all those
18 similarly situated, is and was employed by DEFENDANTS, as an hourly, nonexempt, Warehouse
19 Associate at the TRACY DISTRIBUTION CENTER, entitled to non-discretionary flat sum
20 incentive awards, overtime pay and meal and rest periods from January 12, 2010 to the present.

21 5. Plaintiff MITZI WALLACE (“WALLACE”) individually and on behalf of all
22 those similarly situated, is and was employed by DEFENDANTS, as an hourly, nonexempt,
23 Warehouse Associate at the TRACY DISTRIBUTION CENTER, entitled to non-discretionary
24 flat sum incentive awards, overtime pay and meal and rest periods from March 17, 2011 to the
25 present.

26 6. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of all
27 of DEFENDANTS current and former, non-exempt, Warehouse Associates, employed at the
28 TRACY DISTRIBUTION CENTER in California (the “CALIFORNIA CLASS”) at any time

1 during the period beginning four (4) years prior to the filing of the Complaint and ending on the
2 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
3 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
4 dollars (\$5,000,000.00).

5 7. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of the
6 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
7 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy
8 and practice which failed to provide PLAINTIFFS and the CALIFORNIA CLASS with a second,
9 off duty, meal period of at least 30 minutes on work shifts greater than 10 hours a day or an
10 additional hour of pay at the regular rate of pay in *lieu* thereof in violation of California Labor
11 Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order.

12 8. DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair
13 and deceptive business practice whereby DEFENDANTS retained and continue to retain wages
14 due to PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and
15 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
16 DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS who have been economically injured by DEFENDANTS’ past and
18 current unlawful conduct, and all other appropriate legal and equitable relief.

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant
22 to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
23 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
24 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
25 the DEFENDANTS named in this Complaint, including DOES 1 through 50, are responsible in
26 some manner for one or more of the events and happenings that proximately caused the injuries
27 and damages hereinafter alleged
28

1 “HOMER AWD”, “OT INC”, “DC S SHARE” and “THD AWD” in the wage statements issued
2 by DEFENDANTS to PLAINTIFFS and the other CALIFORNIA CLASS Members.

3 14. However, when calculating the regular rate of pay, in those pay periods where
4 PLAINTIFFS and other CALIFORNIA CLASS Members worked overtime and earned this flat-
5 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
6 discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or
7 calculated all hours worked rather than just all non-overtime hours worked. Management and
8 supervisors described the incentive/bonus program to potential and new employees as part of the
9 compensation package. As a matter of law, the incentive compensation received by
10 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the “regular rate
11 of pay.” The failure to do so has resulted in a systematic underpayment of overtime
12 compensation to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANTS.

13 15. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice and procedure, intentionally and knowingly failed to
16 compensate PLAINTIFFS and the other CALIFORNIA CLASS Members at the correct rate of
17 pay for all overtime worked. This uniform policy and practice of DEFENDANTS is intended to
18 purposefully avoid the payment of the correct overtime compensation as required by California
19 law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over
20 competitors who complied with the law. To the extent equitable tolling operates to toll claims
21 by the CALIFORNIA CLASS Members against DEFENDANTS, the CALIFORNIA CLASS
22 PERIOD should be adjusted accordingly.

23 **B. Missed Meal and Rest Period Violations**

24 16. Pursuant to the Industrial Welfare Commission Wage Orders and the California
25 Labor Codes, an employer shall not employ an employee for a work period of more than five
26 hours per day without providing the employee with a meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and employee. An employer shall

1 not employ an employee for a work period of more than 10 hours per day without providing the
2 employee with a second meal period of not less than 30 minutes, except that if the total hours
3 worked is no more than 12 hours, the second meal period may be waived by mutual consent of
4 the employer and the employee only if the first meal period was not waived. If an employer fails
5 to provide an employee with a mandated meal period, the employer shall pay the employee one
6 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided.

8 17. During the CALIFORNIA CLASS PERIOD, DEFENDANTS employed
9 PLAINTIFFS and the CALIFORNIA CLASS Members for work periods of more than 10 hours
10 per day without providing PLAINTIFFS or the CALIFORNIA CLASS Members with a second
11 duty-free meal period of not less than 30 minutes. Neither PLAINTIFFS nor the CALIFORNIA
12 CLASS Members consented to waive the mandated second duty-free meal period for those work
13 periods of more than 10 hours per day. Nevertheless, DEFENDANTS failed to provide
14 PLAINTIFFS and the CALIFORNIA CLASS MEMBERS with a one (1) additional hour of pay
15 at PLAINTIFFS' and the CALIFORNIA CLASS Members' regular rate of pay for each workday
16 that it failed to provide PLAINTIFFS and the CALIFORNIA CLASS Members with a second
17 duty-free meal period of not less than 30 minutes. As a result of DEFENDANTS' aforementioned
18 unlawful policy, PLAINTIFFS and the CALIFORNIA CLASS Members, from time-to-time,
19 forfeited wages and compensation due and owed for each workday that DEFENDANTS failed to
20 provide the second duty-free meal period was not provided. DEFENDANTS' uniform policy and
21 practice that failed to (a) provide a second duty-free meal period to PLAINTIFFS and other
22 CALIFORNIA CLASS Members on work periods of greater than 10 hours per day, or (b) pay the
23 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
24 that a meal period is not provided is evidenced by DEFENDANTS' business records.

25 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
26 Labor Codes, an employer shall authorize and permit all employees to take a rest period, which
27 so far as practical shall be in the middle of each work period. Generally, an employer must provide
28 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails

1 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
2 the employee's regular rate of pay for each workday that the rest period is not provided.

3 19. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
4 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
5 without being provided ten (10) minute rest periods. Further, these employees were denied their
6 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
7 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
8 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
9 some shifts worked of ten (10) hours or more. SPLAINTIFFS and other CALIFORNIA CLASS
10 Members were also not provided with one (1) hour wages in lieu thereof. As a result of their
11 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were
12 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

13 20. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
14 CALIFORNIA CLASS Members were not permitted to take duty free rest periods as a result of
15 DEFENDANTS uniform policy, practice and procedure of restricting PLAINTIFFS' and other
16 CALIFORNIA CLASS Members' ability to leave DEFENDANTS' premises during their rest
17 period in violation of *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257.

18 **C. Inaccurately Calculated Meal and Rest Period Premiums**

19 21. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
20 to fail to accurately calculate and pay PLAINTIFFS and the other CALIFORNIA CLASS
21 Members their missed meal and rest period premiums. As a result, PLAINTIFFS and the other
22 CALIFORNIA CLASS Members forfeited wages due them for their missed meal and reset
23 periods without compensation at the correct missed meal and rest period rates. DEFENDANTS'
24 uniform policy and practice to not pay the CALIFORNIA CLASS Members the correct rate for
25 all missed meal and rest period premium payment in accordance with applicable law is evidenced
26 by DEFENDANTS' business records.

27 22. State law provides that employees must be paid premium hour of pay at the
28 employee's "regular rate" of pay for each workday that the meal or rest period is not provided.

1 PLAINTIFFS and other CALIFORNIA CLASS Members were compensated at an hourly rate
2 plus a flat-sum incentive pay that was tied to specific elements of an employee's performance.

3 23. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' flat-sum non-discretionary incentive program that
5 paid PLAINTIFFS and other CALIFORNIA CLASS Members flat-sum incentive wages based
6 on their performance for DEFENDANT. The non-discretionary flat-sum incentive program
7 provided all employees paid on an hourly basis with flat-sum incentive compensation when the
8 employees met the various performance goals set by DEFENDANTS. However, when
9 calculating the regular rate of pay in order to pay missed rest and meal period premiums to
10 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANTS failed to include the
11 flat-sum incentive compensation as part of the employees' "regular rate of pay" for purposes of
12 calculating missed rest and meal period premiums. Management and supervisors described the
13 flat-sum incentive program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFFS and other
15 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do
16 so has resulted in a systematic underpayment of premium pay for missed meal and rest periods to
17 PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANTS.

18 24. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
20 matter of company policy, practice and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members CALIFORNIA CLASS Members at the correct
22 rate of pay for all missed meal and rest period premiums. This uniform policy and practice of
23 DEFENDANTS is intended to purposefully avoid the payment of the correct missed meal and
24 rest period premium compensation as required by California law which allowed DEFENDANTS
25 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
26 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS Members against
27 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

28

1 **D. Inaccurate Itemized Wage Statements**

2 25. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
3 Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period
4 premiums, or were paid overtime in the same pay period where they earned a non-discretionary
5 flat-sum incentive award, DEFENDANTS also failed to provide PLAINTIFFS and the other
6 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
7 to show, among other things, the correct rates of pay, correct rates of pay for penalty payments or
8 missed meal and rest periods. California Labor Code Section 226 provides that every employer
9 shall furnish each of his or her employees with an accurate itemized wage statement in writing
10 showing, among other things, gross wages earned and all applicable hourly rates in effect during
11 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
12 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
13 itemized wage statement that lists all the requirements under California Labor Code 226 et seq.
14 As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other members of
15 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

16 26. By reason of this uniform conduct applicable to PLAINTIFFS and all
17 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
18 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the
19 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately record
20 all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA CLASS Members.
21 The proper recording of these employees’ missed meal and rest breaks is DEFENDANTS’
22 burden. As a result of DEFENDANTS’ intentional disregard of the obligation to meet this burden,
23 DEFENDANTS failed to properly calculate and/or pay all required compensation for work
24 performed by PLAINTIFFS and CALIFORNIA CLASS Members and violated the California
25 Labor Code and regulations promulgated thereunder as herein alleged.

26 27. To date, DEFENDANT have not fully paid PLAINTIFF all wages still owed to
27 them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy
28 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

1 **JURISDICTION AND VENUE**

2 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.
4 PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of all of
5 DEFENDANTS current and former, non-exempt, Warehouse Associates, employed at the
6 TRACY DISTRIBUTION CENTER at any time during the period beginning four (4) years prior
7 to the filing of the Complaint and ending on the date as determined by the Court pursuant to Cal.
8 Code of Civ. Proc. § 382.

9 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times,
11 maintained offices and facilities in this County and/or conducts substantial business in this
12 County, and (ii) committed the wrongful conduct herein alleged in this County against members
13 of the CALIFORNIA CLASS.

14 **THE CALIFORNIA CLASS**

15 30. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a CALIFORNIA CLASS, again,
18 defined as all of DEFENDANTS current and former, non-exempt, Warehouse Associates,
19 employed at the TRACY DISTRIBUTION CENTER in California at any time during the period
20 beginning four (4) years prior to the filing of the Complaint and ending on the date as determined
21 by the Court. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
22 Members is under five million dollars (\$5,000,000.00).

23 31. PLAINTIFFS and other class members have uniformly been deprived of wages
24 and penalties from unpaid wages earned and due, including but not limited to unpaid and
25 miscalculated overtime compensation, miscalculated meal and rest period premiums, illegal meal
26 and rest period policies, failure to pay all wages due to discharged and quitting employees, failure
27 to provide accurate itemized wage statements, failure to maintain required records, and interest,
28 attorney's fees, costs, and expenses.

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

3 33. Common questions of law and fact regarding DEFENDANTS' conduct with
4 respect to the miscalculation of overtime wages paid to PLAINTIFFS and the other members of
5 the CALIFORNIA CLASS, miscalculated missed meal and rest period premiums, and failing to
6 provide legally compliant meal and rest periods, and failure to provide accurate itemized wage
7 statements accurate, exist as to all members of the class and predominate over any questions
8 affecting solely any individual members of the class. Among the questions of law and fact
9 common to the class are:

10 a. Whether DEFENDANTS' flat-sum incentive compensation program is
11 non-discretionary;

12 b. Whether DEFENDANTS miscalculated the regular rate of pay in those pay
13 periods where PLAINTIFFS and other CALIFORNIA CLASS MEMBERS worked
14 overtime and earned a flat-sum bonus;

15 c. Whether DEFENDANTS miscalculated the regular rate of pay for missed
16 meal and rest period premiums in those pay periods where PLAINTIFFS and other
17 CALIFORNIA CLASS MEMBERS earned a flat-sum bonus and earned a meal or rest
18 period premium payment from DEFENDANTS;

19 d. Whether DEFENDANTS' meal and rest period policies are legally
20 compliant;

21 e. Whether DEFENDANTS failed to provide accurate itemized wage
22 statements to PLAINTIFFS and the CALIFORNIA CLASS MEMBERS

23 f. Whether the members of the CALIFORNIA CLASS have been required to
24 follow uniform procedures and policies regarding their work for DEFENDANTS;

25 34. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
26 as a result of DEFENDANTS' conduct and actions alleged herein.

27 35. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
28 the same interests as the other members of the class.

1 36. PLAINTIFFS will fairly and adequately represent and protect the interests of the
 2 class. PLAINTIFFS have retained able counsel experienced in class action litigation. The interests
 3 of PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other class
 4 members.

5 37. The questions of law and fact common to the members of the class predominate
 6 over any questions affecting only individual members, including legal and factual issues relating
 7 to liability and damages.

8 38. A class action is superior to other available methods for the fair and efficient
 9 adjudication of this controversy because joinder of all class members is impractical. Moreover,
 10 since the damages suffered by individual members of the class may be relatively small, the
 11 expense and burden of individual litigation makes it practically impossible for the members of the
 12 class individually to redress the wrongs done to them. The class is readily definable and
 13 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
 14 There will be no difficulty in the management of this action as a class action.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 39. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
 17 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
 18 CLASS (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3)
 19 years prior to the filing of the original complaint and ending on the date as determined by the
 20 Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc.
 21 § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
 22 CLASS Members is under five million dollars (\$5,000,000.00).

23 40. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members have
 24 uniformly been deprived of wages and penalties from unpaid wages earned and due, including
 25 but not limited to unpaid and miscalculated overtime compensation, miscalculated meal and rest
 26 period premiums, illegal meal and rest period policies, failure to pay all wages due to discharged
 27 and quitting employees, failure to provide accurate itemized wage statements, failure to maintain
 28 required records, and interest, attorney’s fees, costs, and expenses.

1 41. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
2 joinder of all class members is impractical.

3 42. Common questions of law and fact regarding DEFENDANTS' conduct with
4 respect to the miscalculation of overtime wages paid to PLAINTIFFS and the other members of
5 the CALIFORNIA LABOR SUB-CLASS, miscalculated missed meal and rest period premiums,
6 and failing to provide legally compliant meal and rest periods, and failure to provide accurate
7 itemized wage statements accurate, exist as to all members of the class and predominate over any
8 questions affecting solely any individual members of the class. Among the questions of law and
9 fact common to the class are:

10 a. Whether DEFENDANTS' flat-sum incentive compensation program is
11 non-discretionary;

12 b. Whether DEFENDANTS miscalculated the regular rate of pay in those pay
13 periods where PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS worked
14 overtime and earned a flat-sum bonus;

15 c. Whether DEFENDANTS miscalculated the regular rate of pay for missed
16 meal and rest period premiums in those pay periods where PLAINTIFFS and other
17 CALIFORNIA LABOR SUB-CLASS earned a flat-sum bonus and earned a meal or rest
18 period premium payment from DEFENDANTS;

19 d. Whether DEFENDANTS' meal and rest period policies are legally
20 compliant;

21 e. Whether DEFENDANTS failed to provide accurate itemized wage
22 statements to PLAINTIFF and the CLASS MEMBERS

23 f. Whether CALIFORNIA LABOR SUB-CLASS Members have been
24 required to follow uniform procedures and policies regarding their work for
25 DEFENDANT;

26 43. PLAINTIFFS are members of the CALIFORNIA LABOR SUB-CLASS who
27 suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.
28

1 44. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
2 the same interests as the other members of the class.

3 45. PLAINTIFFS will fairly and adequately represent and protect the interests of the
4 class. PLAINTIFFS have retained able counsel experienced in class action litigation. The
5 interests of PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other
6 members of the CALIFORNIA LABOR SUB-CLASS.

7 46. The questions of law and fact common to the members of the class predominate
8 over any questions affecting only individual members, including legal and factual issues relating
9 to liability and damages.

10 47. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,
12 since the damages suffered by individual members of the class may be relatively small, the
13 expense and burden of individual litigation makes it practically impossible for the members of
14 the class individually to redress the wrongs done to them. The class is readily definable and
15 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
16 There will be no difficulty in the management of this action as a class action.

17 **FIRST CAUSE OF ACTION**

18 **UNLAWFUL BUSINESS PRACTICES**

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

20 **(By PLAINTIFFS and the CALIFORNIA CLASS against DEFENDANTS)**

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

24 49. DEFENDANTS are each a "person" as that term is defined under Cal. Bus. And
25 Prof. Code § 17021.

26 50. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
28

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
2 as follows:

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

12 (Cal. Bus. & Prof. Code § 17203).

13 51. By the conduct alleged herein, DEFENDANTS have engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
16 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this
17 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
18 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
19 competition, including restitution of wages wrongfully withheld.

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

26 53. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
27 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFFS, and
28 other members of the CALIFORNIA CLASS wages due pursuant to the applicable Cal. Lab.

1 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200,
2 *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
3 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

4 54. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
5 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the
6 other members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANTS.

8 55. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
9 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
10 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

16 57. PLAINTIFFS further demand on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
18 not timely provided as required by law.

19 58. By and through the unlawful and unfair business practices described herein,
20 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
21 the other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
22 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
23 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
24 compete against competitors who comply with the law.

25 59. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
4 to, and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages.

8 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
11 engaging in any unlawful and unfair business practices in the future.

12 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
15 a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 9-2001, § 4)**

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)**

23 62. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
25 paragraphs of this Complaint.

26 63. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
28 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately

1 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
2 Members.

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

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

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

10 67. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
12 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice
13 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
14 other members of the CALIFORNIA LABOR SUB-CLASS.

15 68. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
17 of implementing a uniform policy and practice that denies accurate compensation to
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
19 minimum wage pay.

20 69. In committing these violations of the California Labor Code, DEFENDANTS
21 inaccurately calculated the correct time worked and consequently underpaid the actual time
22 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
23 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
24 benefits in violation of the California Labor Code, the Industrial Welfare Commission
25 requirements and other applicable laws and regulations.

26 70. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

1 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
3 they were entitled to, constituting a failure to pay all earned wages.

4 72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
5 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
6 CLASS for the true time they worked, PLAINTIFFS and the other members of the
7 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
8 injury in amounts which are presently unknown to them and which will be ascertained according
9 to proof at trial.

10 73. DEFENDANTS knew or should have known that PLAINTIFFS and the other
11 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
12 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
14 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
15 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
16 correct minimum wages for their time worked.

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

25 75. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
27 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
28 by the California Labor Code and/or other applicable statutes. To the extent minimum wage

1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
2 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
3 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
4 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA
5 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
6 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-
7 CLASS Members are entitled to seek and recover statutory costs.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 9-2001, §3)**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)**

12 76. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
13 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
14 paragraphs of this Complaint.

15 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
16 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
17 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly
18 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
19 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
20 any workweek.

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

23 79. Cal. Lab. Code § 510 further provides that employees in California shall not be
24 employed more than eight (8) hours per workday and/or more than forty (40) hours per
25 workweek unless they receive additional compensation beyond their regular wages in amount
26 specified by law.

27 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.

1 Code § 1198 further states that the employment of an employee for longer hours than those fixed
2 by the Industrial Welfare Commission is unlawful.

3 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
5 DEFENDANT and were not paid for all the time they worked, including overtime work.

6 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
8 of implementing a uniform policy and practice that failed to accurately record overtime worked
9 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
10 denied accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
11 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight
12 (8) hours in a workday and/or forty (40) hours in any workweek.

13 83. In committing these violations of the California Labor Code, DEFENDANTS
14 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
15 violation of the California Labor Code, the Industrial Welfare Commission requirements and
16 other applicable laws and regulations.

17 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive full compensation for all overtime worked.

20 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
24 subject to a valid collective bargaining agreement that would preclude the causes of action
25 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of herself and
26 the CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-
27 negotiable, non-waivable rights provided by the State of California.

28

1 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
3 they were entitled to, constituting a failure to pay all earned wages.

4 87. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
5 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
6 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
7 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
8 CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed
9 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS'
10 business records and witnessed by employees.

11 88. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
12 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true time they worked, PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained according
16 to proof at trial.

17 89. DEFENDANTS knew or should have known that PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
19 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
21 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
23 applicable overtime rate.

24 90. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all time worked and provide them with the requisite overtime compensation, DEFENDANTS
27 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of
2 depriving them of their property and legal rights, and otherwise causing them injury in order to
3 increase company profits at the expense of these employees.

4 91. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
5 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
6 interest, statutory costs, as well as the assessment of any statutory penalties against
7 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
8 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
9 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'
10 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
11 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
12 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as
13 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other
14 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

17 **(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 9-2001, §11)**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS)**

19 92. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
20 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
21 paragraphs of this Complaint.

22 93. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide all
23 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
24 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
25 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
26 did not prevent these employees from being relieved of all of their duties for the legally required
27 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other
28 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by

1 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
2 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required
3 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
4 records. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-
5 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
6 DEFENDANTS' strict corporate policy and practice.

7 94. DEFENDANTS further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
9 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the
10 applicable Wage Order, one additional hour of compensation at each employee's regular rate of
11 pay for each workday that a meal period was not provided.

12 95. As a proximate result of the aforementioned violations, PLAINTIFFS and
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
14 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

17 **(Cal. Lab. Code §§ 226.7, 512 AND IWC Wage Order No. 9-2001, §12)**

18 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)**

19 96. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
20 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
21 paragraphs of this Complaint.

22 97. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
23 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
25 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
27 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided

1 with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
2 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
3 rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

14 **(Cal. Lab. Code § 226 and IWC Wage Order No. 9-2001, § 7)**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS)**

16 100. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

19 101. Cal. Labor Code § 226 provides that an employer must furnish employees with an
20 "accurate itemized" statement in writing showing:

21 a. Gross wages earned;

22 b. Total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of overtime
24 under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
25 Commission;

26 c. The number of piece rate units earned and any applicable piece rate if the
27 employee is paid on a piece-rate basis;

28

1 d. All deductions, provided that all deductions made on written orders of the
2 employee may be aggregated and shown as one item;

3 e. Net wages earned;

4 f. The inclusive dates of the period for which the employee is paid;

5 g. The name of the employee and his or her social security number, except
6 that by January 1, 2008, only the last four digits of his or her social security number or an
7 employee identification number other than a social security number may be shown on the
8 itemized statement;

9 h. The name and address of the legal entity that is the employer; and

10 i. All applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 102. When DEFENDANTS did not accurately record PLAINTIFFS' and other
13 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANTS also failed to
14 provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and
15 accurate wage statements which failed to show, among other things, missed meal and rest periods
16 owed to PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226
17 provides that every employer shall furnish each of his or her employees with an accurate itemized
18 wage statement in writing showing, among other things, gross wages earned and all applicable
19 hourly rates in effect during the pay period and the corresponding amount of time worked at each
20 hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to
21 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California
22 Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFFS
23 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
24 Lab. Code § 226.

25 103. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
26 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
28 expended calculating the correct rates for the overtime worked and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are
2 difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
7 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES WHEN DUE**

10 **(Cal. Lab. Code §§201, 202 and 203)**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS)**

12 104. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
13 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
14 paragraphs of this Complaint.

15 105. Cal. Lab. Code § 200 provides that:

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

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

27 107. Cal. Lab. Code § 202 provides, in relevant part, that:
28

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

12 108. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
13 CLASS Members' employment contract.

14 109. Cal. Lab. Code § 203 provides:

15 If an employer willfully fails to pay, without abatement or reduction,
16 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
17 of an employee who is discharged or who quits, the wages of the
18 employee shall continue as a penalty from the due date thereof at the
19 same rate until paid or until an action therefor is commenced; but
20 the wages shall not continue for more than 30 days.

21 110. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
22 CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these
23 employees who missed meal and rest breaks, as required by law.

24 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS
26 demand up to thirty days of pay as penalty for not paying all wages due at time of termination
27 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
28

1 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
2 costs as allowed by law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

7 a. That the Court certify the First Cause of Action asserted by the
8 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

9 b. An order temporarily, preliminarily and permanently enjoining and
10 restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

11 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and

14 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
15 fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF
16 and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
19 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
20 action pursuant to Cal. Code of Civ. Proc. § 382;

21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum wages and other compensation due to PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
24 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

25 c. Liquidated damages, according to proof at trial, on the second cause of
26 action for minimum wage violations;

27 d. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
28 512 and the applicable IWC Wage Order;

1 e. The greater of all actual damages or fifty dollars (\$50) for the initial pay
2 period in which a violation occurs and one hundred dollars (\$100) per member of the
3 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs
5 for violation of Cal. Lab. Code § 226; and


6 f. The wages of all terminated employees from the CALIFORNIA LABOR
7 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an
8 action therefore is commenced, in accordance with Cal. Lab. Code § 203.

9 3. On all claims:

- 10 a. An award of interest, including prejudgment interest at the legal rate;
- 11 b. Such other and further relief as the Court deems just and equitable; and
- 12 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
13 the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
14 §1197.

15
16 DATED: May 24, 2019

JCL LAW FIRM, APC

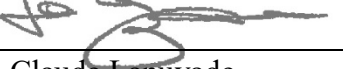
17
18 By: 
19 Jean-Claude Lapuyade
Attorneys for Plaintiffs

20
21 **DEMAND FOR A JURY TRIAL**

22 PLAINTIFFS demand a jury trial on issues triable to a jury.

23 DATED: May 24, 2019

JCL LAW FIRM, APC

24
25 By: 
26 Jean-Claude Lapuyade
Attorneys for Plaintiffs

27
28