

### SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

WSD ENGINEERING, INC., a California Corporation; and DOES 1-50, Inclusive,

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

JASON WALTERS and DANIEL ROSAS, individuals, on behalf of themselves and on behalf of all persons similarly situated,

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

**ENDORSED  
FILED  
ALAMEDA COUNTY  
JAN 19 2021**

CLERK OF THE SUPERIOR COURT  
By TANIA PIERCE

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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/](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://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):  
Alameda Superior Court, Hayward Hall of Justice  
24405 Amador Street  
Hayward, CA 94544

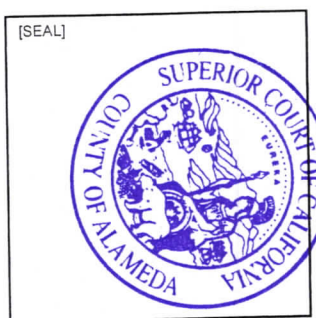
CASE NUMBER:  
(Número del Caso): Rg21086699

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):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: JAN 19 2021 Chad Finke Clerk, by TANIA PIERCE, Deputy  
(Fecha) (Secretario) (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)).

- 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):  
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):



VIA FAX

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2 Shani O. Zakay (State Bar #277924)  
3 3990 Old Town Avenue, Suite C204  
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10 San Diego, CA 92110  
11 Telephone: (619)599-8292  
12 Facsimile: (619) 599-8291

13 Attorneys for Plaintiffs

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **IN AND FOR THE COUNTY OF ALAMEDA**

16 JASON WALTERS and DANIEL ROSAS,  
17 individuals, on behalf of themselves and on  
18 behalf of all persons similarly situated,

19 Plaintiffs,

20 v.

21 WSD ENGINEERING, INC., a California  
22 Corporation; and DOES 1-50, Inclusive,

23 Defendant.

Case No: Rg21086699

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF CAL. LAB. CODE § 204.

**DEMAND FOR A JURY TRIAL**

ENDORSED  
FILED  
ALAMEDA COUNTY  
JAN 19 2021  
CLERK OF THE SUPERIOR COURT  
By TANIA PIERCE  
Deputy

VIA FAX

1 Plaintiffs Jason Walters and Daniel Rosas, individuals, (“PLAINTIFFS”), on behalf of  
2 themselves and all other similarly situated current and former employees, allege on information  
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the  
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant WSD ENGINEERING, INC. (“DEFENDANT”) is a California  
7 corporation and at all relevant times mentioned herein conducted and continues to conduct  
8 substantial and regular business throughout California.

9 2. DEFENDANT, owns and operates a wireless telecommunications, architecture,  
10 engineering, construction and site development firm in California including the Alameda County,  
11 California location where PLAINTIFFS worked.

12 3. PLAINTIFF Walters was employed by DEFENDANT in California as a non-  
13 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from  
14 October of 2018 to October 29, 2020.

15 4. PLAINTIFF Rosas was employed by DEFENDANT in California as a non-  
16 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from  
17 August of 2018 to November 8, 2020.

18 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
19 class, defined as all individuals who are or previously were employed by DEFENDANT in  
20 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time  
21 during the period beginning four (4) years prior to the filing of the Complaint and ending on the  
22 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in  
23 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
24 dollars (\$5,000,000.00).

25 6. PLAINTIFFS bring this Class Action on behalf of themselves and a  
26 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses  
27 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy  
28 and practice which failed to lawfully compensate these employees for all their time worked.

1 DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and deceptive  
2 business practice whereby DEFENDANT retained and continues to retain wages due to  
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other  
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
5 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the  
6 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and  
7 current unlawful conduct, and all other appropriate legal and equitable relief.

8 7. The true names and capacities, whether individual, corporate, subsidiary,  
9 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently  
10 unknown to PLAINTIFFS who therefore sue these DEFENDANT by such fictitious names  
11 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to  
12 allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
13 PLAINTIFFS are informed and believe, and based upon that information and belief allege, that  
14 the DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, are  
15 responsible in some manner for one or more of the events and happenings that proximately caused  
16 the injuries and damages hereinafter alleged

17 8. The agents, servants and/or employees of the DEFENDANT and each of them  
18 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority  
19 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the  
20 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.  
21 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and  
22 all DEFENDANT are jointly and severally liable to PLAINTIFFS and the other members of the  
23 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
24 DEFENDANT’s agents, servants and/or employees.

25 **THE CONDUCT**

26 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
27 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,  
28 meaning the time during which an employee is subject to the control of an employer, including

1 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT  
2 required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all  
3 the time they were under DEFENDANT’S control. Specifically, due to DEFENDANT’S  
4 unlawful policy of only compensating for overtime wages that were pre-approved by  
5 DEFENDANT, PLAINTIFFS performed work before, during, and after their shifts, as well as  
6 during their meal breaks, spending time under DEFENDANT’S control for which they were not  
7 compensated. Moreover, PLAINTIFFS and other CALIFORNIA CLASS Members were not  
8 compensated for work they performed while “on-call” for DEFENDANT. As a result, the  
9 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime  
10 compensation by regularly working without their time being accurately recorded and without  
11 compensation at the applicable minimum wage and overtime rates. DEFENDANT’S uniform  
12 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all  
13 time worked is evidenced by DEFENDANT’s business records.

14 10. As a result of their rigorous work schedules, PLAINTIFFS and other  
15 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks  
16 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and  
17 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal  
18 breaks to complete tasks for DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS  
19 Members were required to perform work as ordered by DEFENDANT for more than five (5)  
20 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
21 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period  
22 each workday in which these employees were required by DEFENDANT to work ten (10) hours  
23 of work. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal  
24 breaks without additional compensation and in accordance with DEFENDANT’s strict corporate  
25 policy and practice.

26 11. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and  
27 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
28 without being provided ten (10) minute rest periods. Further, these employees were denied their

1 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
2 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
3 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
4 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
5 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and  
6 required by DEFENDANT to work during their rest breaks. When they did have an opportunity  
7 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to  
8 remain on the premises, on-duty and on-call, and subject to DEFENDANT's control in  
9 accordance with DEFENDANT's written policy. PLAINTIFFS and other CALIFORNIA CLASS  
10 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous  
11 work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were periodically  
12 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

13         12. Under California law, every employer shall pay to each employee, on the  
14 established payday for the period involved, not less than the applicable minimum wage for all  
15 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
16 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
17 during which an employee is subject to the control of an employer and includes all the time the  
18 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and  
19 other CALIFORNIA CLASS Members were from time to time required to perform work for  
20 DEFENANT before and after their scheduled shifts, as well as during their off-duty meal breaks.  
21 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time  
22 required to answer work related phone calls, text messages, and emails from DEFENDANT after  
23 they had already clocked out. Moreover, PLAINTIFF and other CALIFORNIA CLASS Members  
24 were from time to time required to drive to DEFENDANT's office after clocking out of their  
25 scheduled shifts in order to drop off tools and discuss work related issues with DEFENDANT's  
26 supervisors and/or managers. Further, PLAINTIFF and other CALIFORNIA CLASS Members  
27 were required to complete work related tasks during their off-duty meal breaks. DEFENDANT  
28 failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for any of the time

1 spent under DEFENDANT's control while working off-the-clock. As such, DEFENDANT failed  
2 to pay PLAINTIFFS and other CALIFORNIA CLASS Members the applicable minimum wage  
3 for all hours worked in a payroll period.

4 13. In violation of the applicable sections of the California Labor Code and the  
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
6 matter of company policy, practice and procedure, intentionally and knowingly failed to  
7 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time  
8 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the  
9 payment of the correct compensation as required by California law which allowed DEFENDANT  
10 to illegally profit and gain an unfair advantage over competitors who complied with the law. To  
11 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
12 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

13 14. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS  
14 Members worked during what was supposed to be their meal breaks or otherwise off the clock,  
15 DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA  
16 CLASS with complete and accurate wage statements which failed to show, among other things,  
17 the correct time worked, including, work performed in excess of eight (8) hours in a workday  
18 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the  
19 pay period, and the correct penalty payments or missed meal and rest periods in violation of  
20 California Labor Code Sections 226 and 226.2.

21 15. California Labor Code Section 226 requires an employer to furnish its employees  
22 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,  
23 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
24 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
25 of the employee and only the last four digits of the employee's social security number or an  
26 employee identification number other than a social security number, (8) the name and address of  
27 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay  
28 period and the corresponding number of hours worked at each hourly rate by the employee.

1           16.     Aside from the violations listed herein, DEFENDANT failed to issue to  
2 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
3 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFFS and the  
4 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
5 Code § 226.

6           17.     California Labor Code Section 204 requires an employer, who has in place a pay  
7 period schedule different than that provide in Cal. Lab. Code § 204(a), to pay wages within seven  
8 calendar days from the close of the payroll period. DEFENDANT as a matter of corporate policy,  
9 practice and procedure, failed to pay PLAINTIFFS and the other CALIFORNIA CLASS  
10 Members within seven calendar days from the close of DEFENDANT’S payroll period from time  
11 to time. DEFENDANT had in place a uniform policy and practice to issue wage statements to  
12 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed  
13 DEFENDANT paid its employees within seven calendar days of the close of the payroll period.  
14 Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS  
15 were in fact, from time to time, not paid wages until after seven calendar days from the close of  
16 the payroll period.

17           18.     DEFENDANT as a matter of corporate policy, practice and procedure,  
18 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS  
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
20 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging  
21 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
22 are required to indemnify employees for all expenses incurred in the course and scope of their  
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
27 to be unlawful."  
28



1           19.     In the course of their employment, PLAINTIFFS and other CALIFORNIA CLASS  
2 Members as a business expense, were required by DEFENDANT to use their own personal  
3 cellular phones and personal vehicles, and were required to purchase their own tools, as a result  
4 of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed  
5 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular  
6 phones, personal vehicles, and purchase of their own tools for DEFENDANT’S benefit.  
7 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by  
8 DEFENDANT to use their personal cell phones, personal vehicles, and purchase of their own  
9 tools for work related issues. As a result, in the course of their employment with DEFENDANT  
10 the PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed  
11 business expenses which included, but were not limited to, costs related to the use of their personal  
12 cellular phones, personal vehicles, and purchase of their own tools all on behalf of and for the  
13 benefit of DEFENDANT.

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

26           21.     Specifically, as to PLAINTIFFS’ pay, they were from time to time unable to take  
27 off duty meal and rest breaks and were not fully relieved of duty for their rest and meal periods.  
28 PLAINTIFFS were required to perform work as ordered by DEFENDANT for more than five (5)

1 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
2 provide PLAINTIFFS with a second off-duty meal period each workday in which they were  
3 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
4 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on the premises, on-duty  
5 and on-call, for the rest break. PLAINTIFFS therefore forfeited meal and rest breaks without  
6 additional compensation and in accordance with DEFENDANT'S strict corporate policy and  
7 practice. Further, as a result of DEFENDANT's unlawful policy to only pay overtime wages for  
8 pre-approved overtime hours, PLAINTIFFS were not fully compensated for all time spent  
9 working for and under DEFENDANT's control. Moreover, DEFENDANT also provided  
10 PLAINTIFFS with a paystub that failed to accurately display PLAINTIFFS' correct time worked  
11 and wages, as well as payments for missed meal and rest periods for certain pay periods in  
12 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS the  
13 overtime compensation still owed to them or any penalty wages owed to them under Cal. Lab.  
14 Code § 203. The amount in controversy for PLAINTIFFS individually do not exceed the sum or  
15 value of \$75,000.

#### 16 **JURISDICTION AND VENUE**

17 22. This Court has jurisdiction over this Action pursuant to California Code of Civil  
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
19 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees  
20 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
22 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times  
23 maintained offices and facilities in this County and/or conducts substantial business in this  
24 County, and (ii) committed the wrongful conduct herein alleged in this County against members  
25 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

#### 26 **THE CALIFORNIA CLASS**

27 24. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
2 individuals who are or previously were employed by DEFENDANT in California and classified  
3 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning  
4 four (4) years prior to the filing of the original complaint and ending on the date as determined by  
5 the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate  
6 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

7 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
8 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
9 accordingly.

10 26. DEFENDANT, as a matter of company policy, practice and procedure, and in  
11 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
13 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal  
14 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,  
15 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this  
16 work and permitted or suffered to permit this work.

17 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA  
18 CLASS Member was paid accurately and was provided all meal and rest breaks missed as required  
19 by California laws. DEFENDANT, however, as a matter of uniform and systematic policy and  
20 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to  
21 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member  
22 is paid as required by law, so as to satisfy its burden. This common business practice applicable  
23 to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as  
24 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the  
25 “UCL”) as causation, damages, and reliance are not elements of this claim.

26 28. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
27 CLASS Members is impracticable.

28

1           29.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
2 California law by:

- 3           a.     Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
4                 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
5                 policies, practices and procedures that failed to pay all wages due the  
6                 CALIFORNIA CLASS for all time worked;
- 7           b.     Committing an act of unfair competition in violation of the California Unfair  
8                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
9                 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA  
10                CLASS members;
- 11          c.     Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
12                 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
13                 company policies, practices and procedures that uniformly and systematically  
14                 failed to record and pay PLAINTIFFS and other members of the CALIFORNIA  
15                 CLASS for all time worked, including minimum wages owed and overtime wages  
16                 owed for work performed by these employees; and
- 17          d.     Committing an act of unfair competition in violation of the California Unfair  
18                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.  
19                 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS  
20                 members with necessary expenses incurred in the discharge of their job duties.

21           30.     The Class Action meets the statutory prerequisites for the maintenance of a Class  
22 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 23           a.     The persons who comprise the CALIFORNIA CLASS are so numerous that the  
24                 joinder of all such persons is impracticable and the disposition of their claims as a  
25                 class will benefit the parties and the Court;
- 26           b.     Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
27                 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
28                 uniformly to every member of the CALIFORNIA CLASS;

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- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFFS and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

31. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;

1                   ii. Adjudication with respect to individual members of the CALIFORNIA  
2                   CLASS which would as a practical matter be dispositive of interests of the  
3                   other members not party to the adjudication or substantially impair or  
4                   impede their ability to protect their interests.

5           b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
6           grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
7           class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
8           DEFENDANT uniformly failed to pay all wages due for all time worked by the  
9           members of the CALIFORNIA CLASS as required by law;

10                   i. With respect to the First Cause of Action, the final relief on behalf of the  
11                   CALIFORNIA CLASS sought does not relate exclusively to restitution  
12                   because through this claim PLAINTIFFS seek declaratory relief holding  
13                   that the DEFENDANT’S policy and practices constitute unfair  
14                   competition, along with declaratory relief, injunctive relief, and incidental  
15                   equitable relief as may be necessary to prevent and remedy the conduct  
16                   declared to constitute unfair competition;

17           c. Common questions of law and fact exist as to the members of the CALIFORNIA  
18           CLASS, with respect to the practices and violations of California law as listed  
19           above, and predominate over any question affecting only individual  
20           CALIFORNIA CLASS Members, and a Class Action is superior to other available  
21           methods for the fair and efficient adjudication of the controversy, including  
22           consideration of:

23                   i. The interests of the members of the CALIFORNIA CLASS in individually  
24                   controlling the prosecution or defense of separate actions in that the  
25                   substantial expense of individual actions will be avoided to recover the  
26                   relatively small amount of economic losses sustained by the individual  
27                   CALIFORNIA CLASS Members when compared to the substantial  
28                   expense and burden of individual prosecution of this litigation;

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ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

- 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
- 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

32. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’S employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

- 1           b. A Class Action is superior to any other available method for the fair and efficient
- 2           adjudication of the claims of the members of the CALIFORNIA CLASS because
- 3           in the context of employment litigation a substantial number of individual
- 4           CALIFORNIA CLASS Members will avoid asserting their rights individually out
- 5           of fear of retaliation or adverse impact on their employment;
- 6           c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
- 7           to bring all members of the CALIFORNIA CLASS before the Court;
- 8           d. PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to
- 9           obtain effective and economic legal redress unless the action is maintained as a
- 10          Class Action;
- 11          e. There is a community of interest in obtaining appropriate legal and equitable relief
- 12          for the acts of unfair competition, statutory violations and other improprieties, and
- 13          in obtaining adequate compensation for the damages and injuries which
- 14          DEFENDANT’S actions have inflicted upon the CALIFORNIA CLASS;
- 15          f. There is a community of interest in ensuring that the combined assets of
- 16          DEFENDANT are sufficient to adequately compensate the members of the
- 17          CALIFORNIA CLASS for the injuries sustained;
- 18          g. DEFENDANT has acted or refused to act on grounds generally applicable to the
- 19          CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
- 20          respect to the CALIFORNIA CLASS as a whole;
- 21          h. The members of the CALIFORNIA CLASS are readily ascertainable from the
- 22          business records of DEFENDANT; and
- 23          i. Class treatment provides manageable judicial treatment calculated to bring an
- 24          efficient and rapid conclusion to all litigation of all wage and hour related claims
- 25          arising out of the conduct of DEFENDANT as to the members of the
- 26          CALIFORNIA CLASS.

27           33. DEFENDANT maintain records from which the Court can ascertain and identify  
28 by job title each of DEFENDANT’S employees who as have been systematically, intentionally



1 and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein  
2 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles  
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,  
6 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of  
7 the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR  
8 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the original  
9 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-  
10 CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
11 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
12 (\$5,000,000.00).

13 35. DEFENDANT, as a matter of company policy, practice and procedure, and in  
14 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
15 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
16 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for the time  
17 worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,  
18 and other wages and premiums owed to these employees, even though DEFENDANT enjoyed  
19 the benefit of this work, required employees to perform this work and permitted or suffered to  
20 permit this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR  
21 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
22 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
23 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-  
24 CLASS PERIOD should be adjusted accordingly.

25 36. DEFENDANT maintains records from which the Court can ascertain and identify  
26 by name and job title, each of DEFENDANT’S employees who have been systematically,  
27 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and  
28

1 procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include  
2 any additional job titles of similarly situated employees when they have been identified.

3 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable

5 38. Common questions of law and fact exist as to members of the CALIFORNIA  
6 LABOR SUB-CLASS, including, but not limited, to the following:

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
8 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
9 missed meal and rest breaks in violation of the California Labor Code and  
10 California regulations and the applicable California Wage Order;
  - 11 b. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of  
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
13 thirty (30) minute meal breaks and rest periods;
  - 14 c. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of  
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
16 statements;
  - 17 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime  
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in  
19 violation of the California Labor Code and California regulations and the  
20 applicable California Wage Order;
  - 21 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to  
22 compensation for time worked, including overtime worked, under the overtime  
23 pay requirements of California law;
  - 24 f. Whether DEFENDANNT unlawfully failed to timely pay earned wages to  
25 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS;
  - 26 g. Whether DEFENDANT has engaged in unfair competition by the above-listed  
27 conduct;
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1 h. The proper measure of damages and penalties owed to the members of the  
2 CALIFORNIA LABOR SUB-CLASS; and

3 i. Whether DEFENDANT's conduct was willful.

4 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
5 under California law by:

6 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS  
7 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for  
8 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code  
9 § 1194;

10 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
11 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS  
12 the correct minimum wage pay for which DEFENDANT are liable pursuant to  
13 Cal. Lab. Code §§ 1194 and 1197;

14 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS  
15 and the other members of the CALIFORNIA CLASS with all legally required off-  
16 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest  
17 breaks;

18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the  
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
20 statement in writing showing all accurate rates in effect during the pay period and  
21 the corresponding amount of time worked at each overtime rate by the employee;

22 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the  
23 CALIFORNIA CLASS members with necessary expenses incurred in the  
24 discharge of their job duties;

25 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
26 employee is discharged or quits from employment, the employer must pay the  
27 employee all wages due without abatement, by failing to tender full payment  
28 and/or restitution of wages owed or in the manner required by California law to

1 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
2 their employment; and

3 g. Violating Cal. Lab. Code § 204, which provides that an employer must pay an  
4 employee wages within seven days of the close of the payroll period.

5 40. This Class Action meets the statutory prerequisites for the maintenance of a Class  
6 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
9 is impracticable and the disposition of their claims as a class will benefit the parties  
10 and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
13 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
14 CLASS;

15 c. The claims of the representative PLAINTIFFS are typical of the claims of each  
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the  
17 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt  
18 employee paid on an hourly basis who was subjected to the DEFENDANT’S  
19 practice and policy which failed to pay the correct amount of wages due to the  
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
21 as a result of DEFENDANT’S employment practices. PLAINTIFFS and the  
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
24 of misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFFS will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel  
27 who are competent and experienced in Class Action litigation. There are no  
28 material conflicts between the claims of the representative PLAINTIFFS and the

1 members of the CALIFORNIA LABOR SUB-CLASS that would make class  
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
4 Members.

5 41. In addition to meeting the statutory prerequisites to a Class Action, this action is  
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 a. Without class certification and determination of declaratory, injunctive, statutory  
8 and other legal questions within the class format, prosecution of separate actions  
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
10 the risk of:

11 i. Inconsistent or varying adjudications with respect to individual members  
12 of the CALIFORNIA LABOR SUB-CLASS which would establish  
13 incompatible standards of conduct for the parties opposing the  
14 CALIFORNIA LABOR SUB-CLASS; or

15 ii. Adjudication with respect to individual members of the CALIFORNIA  
16 LABOR SUB-CLASS which would as a practical matter be dispositive of  
17 interests of the other members not party to the adjudication or substantially  
18 impair or impede their ability to protect their interests.

19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
21 SUB-CLASS, making appropriate class-wide relief with respect to the  
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
23 failed to pay all wages due for all time worked by the members of the  
24 CALIFORNIA LABOR SUB-CLASS as required by law;

25 c. Common questions of law and fact predominate as to the members of the  
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations  
27 of California Law as listed above, and predominate over any question affecting  
28 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient adjudication  
2 of the controversy, including consideration of:

3 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS  
4 in individually controlling the prosecution or defense of separate actions in  
5 that the substantial expense of individual actions will be avoided to recover  
6 the relatively small amount of economic losses sustained by the individual  
7 CALIFORNIA LABOR SUB-CLASS Members when compared to the  
8 substantial expense and burden of individual prosecution of this litigation;

9 ii. Class certification will obviate the need for unduly duplicative litigation  
10 that would create the risk of:

11 1. Inconsistent or varying adjudications with respect to individual  
12 members of the CALIFORNIA LABOR SUB-CLASS, which  
13 would establish incompatible standards of conduct for the  
14 DEFENDANT; and/or,

15 2. Adjudications with respect to individual members of the  
16 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
17 be dispositive of the interests of the other members not parties to  
18 the adjudication or substantially impair or impede their ability to  
19 protect their interests;

20 iii. In the context of wage litigation because a substantial number of individual  
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
22 legal rights out of fear of retaliation by DEFENDANT, which may  
23 adversely affect an individual's job with DEFENDANT or with a  
24 subsequent employer, the Class Action is the only means to assert their  
25 claims through a representative; and,

26 iv. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this litigation because class treatment will obviate  
28 the need for unduly and unnecessary duplicative litigation that is likely to

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result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

42. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
5 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
6 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
7 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
8 PERIOD; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an  
10 efficient and rapid conclusion to all litigation of all wage and hour related claims  
11 arising out of the conduct of DEFENDANT as to the members of the  
12 CALIFORNIA LABOR SUB-CLASS.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANT)**

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

20 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may  
27 be enjoined in any court of competent jurisdiction. The court may make such orders or  
28 judgments, including the appointment of a receiver, as may be necessary to prevent the



1 use or employment by any person of any practice which constitutes unfair competition, as  
2 defined in this chapter, or as may be necessary to restore to any person in interest any  
3 money or property, real or personal, which may have been acquired by means of such  
4 unfair competition. (Cal. Bus. & Prof. Code § 17203).

5 46. By the conduct alleged herein, DEFENDANT has engaged and continues to  
6 engage in a business practice which violates California law, including but not limited to, the  
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
8 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,  
9 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant  
10 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
11 to constitute unfair competition, including restitution of wages wrongfully withheld.

12 47. By the conduct alleged herein, DEFENDANT'S practices were unlawful and  
13 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
14 unscrupulous or substantially injurious to employees, and were without valid justification or  
15 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203  
16 of the California Business & Professions Code, including restitution of wages wrongfully  
17 withheld.

18 48. By the conduct alleged herein, DEFENDANT'S practices were deceptive and  
19 fraudulent in that DEFENDANT'S uniform policy and practice failed to pay PLAINTIFFS, and  
20 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
21 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,  
22 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
23 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
24 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
25 wrongfully withheld.

26 49. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,  
27 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFFS and the  
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1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANT.

3 50. By the conduct alleged herein, DEFENDANT'S practices were also unfair and  
4 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide  
5 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

6 51. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each  
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
8 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
9 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
10 hours of work.

11 52. PLAINTIFFS further demand on behalf of themselves and on behalf of each  
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
13 not timely provided as required by law.

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

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

25 55. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
26 to, and do, seek such relief as may be necessary to restore to them the money and property which  
27 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
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1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
2 business practices, including earned but unpaid wages.

3 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
6 engaging in any unlawful and unfair business practices in the future.

7 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,  
8 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
9 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
10 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other  
11 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
12 and economic harm unless DEFENDANT are restrained from continuing to engage in these  
13 unlawful and unfair business practices.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

17 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**  
18 **DEFENDANT)**

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

22 59. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
23 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code  
24 and the Industrial Welfare Commission requirements for DEFENDANT’s failure to accurately  
25 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

26 60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
27 policy, an employer must timely pay its employees for all hours worked.  
28

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

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

6           63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and  
7 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
8 amount of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was  
9 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other  
10 members of the CALIFORNIA LABOR SUB-CLASS.

11           64. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS  
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
15 pay.

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

22           66. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,  
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
24 the correct minimum wage compensation for their time worked for DEFENDANT.

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

28

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

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

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

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

1 SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful, intentional and  
2 not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
3 Members are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

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

7 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**  
8 **DEFENDANT)**

9 72. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
11 this Complaint.

12 73. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
13 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code  
14 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately  
15 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the  
16 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the  
17 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work  
18 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

25 76. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
26 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.  
27 Code § 1198 further states that the employment of an employee for longer hours than those fixed  
28 by the Industrial Welfare Commission is unlawful.

1           77.    DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
3 amount of overtime worked and correct applicable overtime rate for the amount of overtime they  
4 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and  
5 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFFS and  
6 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed  
7 to pay these employees the correct applicable overtime wages for all overtime worked.

8           78.    DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,  
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
10 of implementing a uniform policy and practice that denied accurate compensation to  
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all  
12 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or  
13 forty (40) hours in any workweek.

14           79.    In committing these violations of the California Labor Code, DEFENDANT  
15 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
16 consequently underpaid the actual time worked by PLAINTIFFS and other members of the  
17 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the  
18 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
19 Industrial Welfare Commission requirements and other applicable laws and regulations.

20           80.    As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
21 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
22 full compensation for all overtime worked.

23           81.    Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
24 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS  
25 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and  
26 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid  
27 collective bargaining agreement that would preclude the causes of action contained herein this  
28 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the

1 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT’S violations of non-negotiable,  
2 non-waivable rights provided by the State of California.

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

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

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

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

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



1 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard  
2 for their legal rights, or the consequences to them, and with the despicable intent of depriving  
3 them of their property and legal rights, and otherwise causing them injury in order to increase  
4 company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

19 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
20 **DEFENDANT)**

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

24 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
25 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR  
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
27 the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
28 not prevent these employees from being relieved of all of their duties for the legally required off-



1 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
3 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided  
4 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS  
5 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper  
6 rest periods by DEFENDANT and DEFENDANT’S managers. When DEFENDANT provided  
7 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they  
8 required PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members to stay on  
9 DEFENDANT’S premises for those rest breaks.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

20 **(Cal. Lab. Code §§ 2802)**

21 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
22 **DEFENDANT)**

23 96. 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 97. Cal. Lab. Code § 2802 provides, in relevant part, that:  
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28

1 An employer shall indemnify his or her employee for all necessary expenditures  
2 or losses incurred by the employee in direct consequence of the discharge of his  
3 or her duties, or of his or her obedience to the directions of the employer, even  
4 though unlawful, unless the employee, at the time of obeying the directions,  
5 believed them to be unlawful.

6 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
7 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
8 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
9 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-  
10 CLASS members for expenses which included, but were not limited to, costs related to using their  
11 personal cellular phones and personal vehicles, as well as purchase of their own tools, all on behalf  
12 of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA  
13 CLASS Members were required by DEFENDANT to use their personal cell phones to respond to  
14 work related issues and use their personal vehicles to travel to and from work sites. Further,  
15 PLAINTIFFS and CALIFORNIA CLASS Members were from time to time required by  
16 DEFENDANT to purchase their own tools in order to complete work tasks for DEFENDANT.  
17 DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFFS and  
18 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their  
19 personal cellular phones, personal vehicles, and purchase of their own tools for DEFENDANT  
20 within the course and scope of their employment for DEFENDANT. These expenses were  
21 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT'S  
22 conduct to assert any waiver of this expectation. Although these expenses were necessary  
23 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,  
24 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR  
25 SUB-CLASS members for these expenses as an employer is required to do under the laws and  
26 regulations of California.

27 99. PLAINTIFFS therefore demand reimbursement for expenditures or losses  
28 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their

1 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest  
2 at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

5 **(Cal. Lab. Code §§ 226 and 226.2)**

6 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
7 **DEFENDANT)**

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

11 101. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
12 “accurate itemized” statement in writing showing:

- 13 a. Gross wages earned;
- 14 b. Total hours worked by the employee, except for any employee whose  
15 compensation is solely based on a salary and who is exempt from payment of  
16 overtime under subdivision (a) of Section 515 or any applicable order of the  
17 Industrial Welfare Commission;
- 18 c. The number of piece rate units earned and any applicable piece rate if the employee  
19 is paid on a piece-rate basis;
- 20 d. All deductions, provided that all deductions made on written orders of the  
21 employee may be aggregated and shown as one item;
- 22 e. Net wages earned;
- 23 f. The inclusive dates of the period for which the employee is paid;
- 24 g. The name of the employee and his or her social security number, except that by  
25 January 1, 2008, only the last four digits of his or her social security number or an  
26 employee identification number other than a social security number may be shown  
27 on the itemized statement;
- 28 h. The name and address of the legal entity that is the employer; and

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

3           102. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate  
4 employees with an “accurate itemized” statement in writing showing:

5           a. The total hours of compensable rest and recovery periods, the rate of  
6           compensation, and the gross wages paid for those periods during the  
7           pay period; and

8           b. The total hours of other nonproductive time, the rate of  
9           compensation, and the gross wages paid for that time during the pay  
10          period.

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

25          104. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code  
26 § 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 difficult  
2 to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period  
4 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a  
5 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the  
6 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and  
7 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 **EIGHTH CAUSE OF ACTION**  
9 **FAILURE TO PAY WAGES WHEN DUE**  
10 **(Cal. Lab. Code §§201, 202, 203)**

11 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
12 **DEFENDANT)**

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

16 106. Cal. Lab. Code § 200 provides that:

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

24 107. 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."

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

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

10 109. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-  
11 CLASS Members' employment contract.

12 110. Cal. Lab. Code § 203 provides:

13  
14 If an employer willfully fails to pay, without abatement or reduction, in accordance  
15 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
16 discharged or who quits, the wages of the employee shall continue as a penalty  
17 from the due date thereof at the same rate until paid or until an action therefor is  
18 commenced; but the wages shall not continue for more than 30 days.

19 111. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
20 CLASS Members terminated and DEFENDANT has not tendered payment of wages, to these  
21 employees who missed meal and rest breaks, as required by law.

22 112. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS  
24 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for  
25 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS  
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory  
27 costs as allowed by law.  
28



1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY EARNED WAGES**

3 **(Cal. Lab. Code § 204)**

4 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
5 **DEFENDANT)**

6 113. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
8 paragraphs of this Complaint.

9 114. Cal. Lab. Code § 204(a) provides in relevant part, that:

10 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,  
11 earned by any person in any employment are due and payable twice during each  
12 calendar month, on days designated in advance by the employer as the regular  
13 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar  
14 month shall be paid for between the 16th and the 26th day of the month during  
15 which the labor was performed, and labor performed between the 16th and the last  
16 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th  
17 day of the following month.

18 115. DEFENDANT did not have in place a pay period schedule of the 1st and 15th, and  
19 16th and the last day of the month. Rather, DEFENDANT had in place a pay period schedule  
20 different than that provide in Cal. Lab. Code § 204(a).

21 116. As such, Cal. Lab. Code § 204(d) provides that:

22 The requirements of this section shall be deemed satisfied by the payment of wages  
23 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
24 *seven calendar days* following the close of the payroll period.

25 117. PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS  
26 were from time to time paid more than seven days after the close of DEFENDANT's payroll  
27 period. DEFENDANT had in place a uniform policy and practice to issue wage statements to  
28 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed

1 DEFENDANT paid its employees within seven calendar days of the close of the payroll period.  
2 Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS  
3 were in fact, from time to time, not paid wages until after seven calendar days from the close of  
4 the payroll period.

5 118. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
6 § 204, causing injury and damages to the PLAINTIFFS and the other members of the  
7 CALIFORNIA LABOR SUB-CLASS. Therefore, PLAINTIFFS and the other members of the  
8 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages pursuant to Cal.  
9 Lab. Code § 210 of one hundred dollars (\$100.00) for the initial violation for each failure to pay  
10 each employee, and two hundred dollars (\$200.00) for each subsequent violation, plus 25 percent  
11 (25%) of the amount unlawfully withheld, in an amount according to proof at the time of trial.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly  
14 and severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
17 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
18 b. An order temporarily, preliminarily and permanently enjoining and restraining  
19 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
20 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully  
21 withheld from compensation due to PLAINTIFFS and the other members of the  
22 CALIFORNIA CLASS; and  
23 d. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund  
24 for restitution of the sums incidental to DEFENDANT’S violations due to  
25 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and  
28 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a

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- class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, unreimbursed expenses, and other compensation due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
  - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
  - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
  - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
  - f. The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, plus 25 percent (25%) of the amount unlawfully withheld, for violation of Cal. Lab. Code § 210.

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3. On all claims:

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

DATED: January 15, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for Plaintiffs

**DEMAND FOR A JURY TRIAL**

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

DATED: January 15, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for Plaintiffs