

**SUMMONS
(CITACION JUDICIAL)**

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

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

HILTON MANAGEMENT, LLC., a Delaware limited liability company; and DOES 1-50, Inclusive,

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

SHASTA COLLINS on behalf of herself and on behalf of all persons similarly situated,

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
San Francisco Superior Court, Civic Center Courthouse
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER: (Número del Caso):

CGG-21-589873

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)**
ZAKAY LAW GROUP, APLC, 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE: **03/03/2021** Clerk, by **KALENE APOLONIO**, 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

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

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203

4 **JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
6 San Diego, CA 92110
7 Telephone: (619)599-8292
Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

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

CGC-21-589873

11 SHASTA COLLINS on behalf of herself and
on behalf of all persons similarly situated,

12 Plaintiff,

13 v.

14 HILTON MANAGEMENT, LLC., a
15 Delaware limited liability company; and
DOES 1-50, Inclusive,

16 Defendants.

Case No:

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;

DEMAND FOR A JURY TRIAL

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/22/2021
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk

1 Plaintiff Shasta Collins, an individual, (“PLAINTIFF”), on behalf of herself and all other similarly
2 situated current and former employees, alleges on information and belief, except for her own
3 acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant HILTON MANAGEMENT, LLC. is a limited liability company and at
6 all relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California. (“Defendants”)

8 2. DEFENDANT, owns and operate a hotels throughout the world, including hotels
9 in California and including the Hilton San Francisco Union Square Hotel where PLAINTIFF
10 worked.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from July 2019 to
13 January of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANTS as a non-exempt employee paid on an hourly basis, entitled to minimum wage
15 and overtime pay and to compliant meal and rest breaks.

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

23 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
24 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
25 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
26 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S
27 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
28 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the

1 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,
2 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have
3 been economically injured by DEFENDANT’S past and current unlawful conduct, and all other
4 appropriate legal and equitable relief.

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT were
24 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
27 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
28 the time they were under DEFENDANT’s control. Specifically, DEFENDANT required

1 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
2 meal break, as well as before her shift started and after his shift ended. PLAINTIFF was often
3 interrupted by work assignments during her breaks. Indeed there were many days where
4 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
5 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
6 compensation by working without their time being accurately recorded and without compensation
7 at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and
8 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
9 is evidenced by DEFENDANTS' business records.

10 9. As a result of their rigorous work schedules, and because they often worked single-
11 staffed shifts, PLAINTIFF and other CALIFORNIA CLASS Members were also from time to
12 time unable to take off duty meal breaks and were not fully relieved of duty for meal periods.
13 PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as
14 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
15 duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
16 CLASS Members with a second off-duty meal period each workday in which these employees
17 were required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other
18 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
19 compensation and in accordance with DEFENDANT's strict corporate policy and practice

20 10. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
21 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
22 without being provided ten (10) minute rest periods. Further, these employees were denied their
23 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
24 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
25 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
27 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on the
28 premises, on-duty and on-call while carrying a communication device, and subject to

1 DEFENDANT’S control in accordance with DEFENDANT’S written policy. PLAINTIFF and
2 other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu
3 thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
4 CLASS Members were periodically denied their proper rest periods by DEFENDANTS and
5 DEFENDANTS’ managers.

6 11. Under California law, every employer shall pay to each employee, on the
7 established payday for the period involved, not less than the applicable minimum wage for all
8 hours worked in the payroll period, whether the remuneration is measured by time, piece,
9 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
10 during which an employee is subject to the control of an employer and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so.

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

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

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

9 15. Aside from the violations listed herein, DEFENDANT failed to issue to
10 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
11 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
12 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
13 226.

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

25 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
26 Members as a business expense, were required by DEFENDANTS to use their own personal
27 cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANTS but were not reimbursed or indemnified by DEFENDANT for the cost associated

1 with the use of their personal cellular phones for DEFENDANT’S benefit. Specifically,
2 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
3 their personal cell phones to for work related issues. As a result, in the course of their employment
4 with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
5 unreimbursed business expenses which included, but were not limited to, costs related to the use
6 of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

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

19 19. Specifically as to PLAINTIFF’s pay, she was from time to time unable to take off
20 duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods, and
21 was required to keep a communication device on while on those breaks. PLAINTIFF was required
22 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
23 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
24 second off-duty meal period each workday in which he was required by DEFENDANT to work
25 ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a rest break, they
26 required PLAINTIFF to remain on the premises, on-duty and on-call carrying a communications
27 device, for the rest break. PLAINTIFF therefore forfeited meal and rest breaks without additional
28 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.

1 DEFENDANTS also provided PLAINTIFF with a paystub that failed to accurately display
2 PLAINTIFF's correct time worked and wages, as well as payments for missed meal and rest
3 periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT
4 have not fully paid PLAINTIFF the overtime compensation still owed to them or any penalty
5 wages owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
6 individually does not exceed the sum or value of \$75,000.

7 **JURISDICTION AND VENUE**

8 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
10 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
11 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

17 **THE CALIFORNIA CLASS**

18 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
21 individuals who are or previously were employed by DEFENDANT in California at the Hilton
22 San Francisco Union Square Hotel and classified as non-exempt employees (the "CALIFORNIA
23 CLASS") at any time during the period beginning four (4) years prior to the filing of the original
24 complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
25 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
26 Members is under five million dollars (\$5,000,000.00).

1 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
8 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this
10 work and permitted or suffered to permit this work.

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

20 26. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
25 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
26 policies, practices and procedures that failed to pay all wages due the
27 CALIFORNIA CLASS for all time worked;

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

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

- 17 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
18 joinder of all such persons is impracticable and the disposition of their claims as a
19 class will benefit the parties and the Court;
- 20 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
21 raised in this Complaint are common to the CALIFORNIA CLASS will apply
22 uniformly to every member of the CALIFORNIA CLASS;
- 23 c. The claims of the representative PLAINTIFF are typical of the claims of each
24 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
25 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
26 hourly basis who was subjected to the DEFENDANT’S deceptive practice and
27 policy which failed to provide the legally required meal and rest periods to the
28 CALIFORNIA CLASS and thereby systematically underpaid compensation to

1 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
2 as a result of DEFENDANT’S employment practices. PLAINTIFF and the
3 members of the CALIFORNIA CLASS were and are similarly or identically
4 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
5 misconduct engaged in by DEFENDANT; and

6 d. The representative PLAINTIFF will fairly and adequately represent and protect
7 the interest of the CALIFORNIA CLASS, and has retained counsel who are
8 competent and experienced in Class Action litigation. There are no material
9 conflicts between the claims of the representative PLAINTIFF and the members
10 of the CALIFORNIA CLASS that would make class certification inappropriate.
11 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
12 CALIFORNIA CLASS Members.

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

15 a. Without class certification and determination of declaratory, injunctive, statutory
16 and other legal questions within the class format, prosecution of separate actions
17 by individual members of the CALIFORNIA CLASS will create the risk of:

18 i. Inconsistent or varying adjudications with respect to individual members
19 of the CALIFORNIA CLASS which would establish incompatible
20 standards of conduct for the parties opposing the CALIFORNIA CLASS;
21 and/or;

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

26 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
27 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
28 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that

1 DEFENDANTS uniformly failed to pay all wages due for all time worked by the
2 members of the CALIFORNIA CLASS as required by law;

3 i. With respect to the First Cause of Action, the final relief on behalf of the
4 CALIFORNIA CLASS sought does not relate exclusively to restitution
5 because through this claim PLAINTIFF seeks declaratory relief holding
6 that the DEFENDANT'S policy and practices constitute unfair
7 competition, along with declaratory relief, injunctive relief, and incidental
8 equitable relief as may be necessary to prevent and remedy the conduct
9 declared to constitute unfair competition;

10 c. Common questions of law and fact exist as to the members of the CALIFORNIA
11 CLASS, with respect to the practices and violations of California law as listed
12 above, and predominate over any question affecting only individual
13 CALIFORNIA CLASS Members, and a Class Action is superior to other available
14 methods for the fair and efficient adjudication of the controversy, including
15 consideration of:

16 i. The interests of the members of the CALIFORNIA CLASS in individually
17 controlling the prosecution or defense of separate actions in that the
18 substantial expense of individual actions will be avoided to recover the
19 relatively small amount of economic losses sustained by the individual
20 CALIFORNIA CLASS Members when compared to the substantial
21 expense and burden of individual prosecution of this litigation;

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

24 1. Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS, which would establish
26 incompatible standards of conduct for the DEFENDANT; and/or;

27 2. Adjudications with respect to individual members of the
28 CALIFORNIA CLASS would as a practical matter be dispositive

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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.

30. 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.
- 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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA 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 CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
2 obtain effective and economic legal redress unless the action is maintained as a
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANT are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANT have acted or refused to act on grounds generally applicable to the
12 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
13 respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANT; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an
17 efficient and rapid conclusion to all litigation of all wage and hour related claims
18 arising out of the conduct of DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

20 31. DEFENDANT maintain records from which the Court can ascertain and identify
21 by job title each of DEFENDANT'S employees who as have been systematically, intentionally
22 and uniformly subjected to DEFENDANT'S company policy, practices and procedures as herein
23 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
24 of similarly situated employees when they have been identified.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
27 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
28 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-

1 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
2 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
3 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
4 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
5 (\$5,000,000.00).

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

18 34. DEFENDANT maintain records from which the Court can ascertain and identify
19 by name and job title, each of DEFENDANT’S employees who have been systematically,
20 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
22 additional job titles of similarly situated employees when they have been identified.

23 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
24 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 27 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for

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missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- e. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT’s conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the

1 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
2 employee paid on an hourly basis who was subjected to the DEFENDANT’S
3 practice and policy which failed to pay the correct amount of wages due to the
4 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
5 a result of DEFENDANT’S employment practices. PLAINTIFF and the members
6 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
8 misconduct engaged in by DEFENDANT; and

9 d. The representative PLAINTIFF will fairly and adequately represent and protect
10 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
11 who are competent and experienced in Class Action litigation. There are no
12 material conflicts between the claims of the representative PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS that would make class
14 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
15 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
16 Members.

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

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

23 i. Inconsistent or varying adjudications with respect to individual members
24 of the CALIFORNIA LABOR SUB-CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA LABOR SUB-CLASS; or

27 ii. Adjudication with respect to individual members of the CALIFORNIA
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

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interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - 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 LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter

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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 LABOR SUB-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.

40. 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;

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 42. DEFENDANT are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

28 45. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 46. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
4 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a systematic
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

11 47. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
12 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 48. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
16 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

18 49. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
20 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
21 each workday in which a second off-duty meal period was not timely provided for each ten (10)
22 hours of work.

23 50. PLAINTIFF further demands on behalf of himself and on behalf of each
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
25 not timely provided as required by law.

26 51. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
3 against competitors who comply with the law.

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

9 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
10 and do, seek such relief as may be necessary to restore to them the money and property which
11 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
13 business practices, including earned but unpaid wages.

14 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
17 engaging in any unlawful and unfair business practices in the future.

18 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
20 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
21 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
23 and economic harm unless DEFENDANT are restrained from continuing to engage in these
24 unlawful and unfair business practices.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**
3 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
5 **Defendants)**

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

9 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
11 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
12 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

15 59. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a wage less than
17 the minimum so fixed is unlawful.

18 60. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
19 including minimum wage compensation and interest thereon, together with the costs of suit.

20 61. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
21 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
22 amount of time they work. As set forth herein, DEFENDANTS’ uniform policy and practice was
23 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS.

25 62. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
27 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
pay.

1 63. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
4 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
5 benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 64. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 the correct minimum wage compensation for their time worked for DEFENDANTS.

10 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
12 they were entitled to, constituting a failure to pay all earned wages.

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

18 67. DEFENDANTS knew or should have known that PLAINTIFFS and the other
19 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
20 worked. DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
24 minimum wages for their time worked.

25 68. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION**
16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

19 70. PLAINTIFF, 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 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
25 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
27 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
28 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

7 74. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
9 Code § 1198 further states that the employment of an employee for longer hours than those fixed
10 by the Industrial Welfare Commission is unlawful.

11 75. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
14 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
17 to pay these employees the correct applicable overtime wages for all overtime worked.

18 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
20 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
21 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
22 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
23 in any workweek.

24 77. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
26 consequently underpaid the actual time worked by PLAINTIFF and other members of the
27 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
28 payment of all earned wages, and other benefits in violation of the California Labor Code, the
Industrial Welfare Commission requirements and other applicable laws and regulations.

1 78. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
3 full compensation for all overtime worked.

4 79. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
5 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
8 bargaining agreement that would preclude the causes of action contained herein this Complaint.
9 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
10 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
11 the State of California.

12 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

15 81. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
18 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed
20 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS'
21 business records and witnessed by employees.

22 82. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
26 presently unknown to them and which will be ascertained according to proof at trial.

27 83. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

4 84. In performing the acts and practices herein alleged in violation of California labor
5 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
6 all time worked and provide them with the requisite overtime compensation, DEFENDANTS
7 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
8 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
9 disregard for their legal rights, or the consequences to them, and with the despicable intent of
10 depriving them of their property and legal rights, and otherwise causing them injury in order to
11 increase company profits at the expense of these employees.

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
27 **Defendants)**

28 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
this Complaint.

1 87. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
2 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
3 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
4 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
5 not prevent these employees from being relieved of all of their duties for the legally required off-
6 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
8 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
10 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
11 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANTS' strict corporate policy and practice.

14 88. DEFENDANTS further violated California Labor Code §§ 226.7 and the
15 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
16 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
17 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
18 workday that a meal period was not provided.

19 89. As a proximate result of the aforementioned violations, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
21 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on DEFENDANTS' premises for those rest breaks.

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

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

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2 **SIXTH CAUSE OF ACTION**

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

4 **(Cal. Lab. Code §§ 2802)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

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

10 95. Cal. Lab. Code § 2802 provides, in relevant part, that:

11 An employer shall indemnify his or her employee for all necessary expenditures
12 or losses incurred by the employee in direct consequence of the discharge of his
13 or her duties, or of his or her obedience to the directions of the employer, even
14 though unlawful, unless the employee, at the time of obeying the directions,
15 believed them to be unlawful.

16 96. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
17 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
19 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for expenses which included, but were not limited to, costs related to using their
21 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
22 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
23 their personal cell phones to respond to work related issues. DEFENDANTS' uniform policy,
24 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
25 CLASS members for expenses resulting from using their personal cellular phones for
26 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
27 expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by
28 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
2 do under the laws and regulations of California.

3 97. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
4 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
5 duties for DEFENDANTS, or their obedience to the directions of DEFENDANT, with interest at
6 the statutory rate and costs under Cal. Lab. Code § 2802.

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8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

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

16 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
17 “accurate itemized” statement in writing showing:

- 18 a. Gross wages earned;
- 19 b. Total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of
21 overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission;
- 23 c. The number of piece rate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis;
- 25 d. All deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item;
- 27 e. Net wages earned;
- 28 f. The inclusive dates of the period for which the employee is paid;

- 1 g. The name of the employee and his or her social security number, except that by
- 2 January 1, 2008, only the last four digits of his or her social security number or an
- 3 employee identification number other than a social security number may be shown
- 4 on the itemized statement;
- 5 h. The name and address of the legal entity that is the employer; and
- 6 i. All applicable hourly rates in effect during the pay period and the corresponding
- 7 number of hours worked at each hourly rate by the employee.

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

- 10 a. The total hours of compensable rest and recovery periods, the rate of
- 11 compensation, and the gross wages paid for those periods during the
- 12 pay period; and
- 13 b. The total hours of other nonproductive time, the rate of
- 14 compensation, and the gross wages paid for that time during the pay
- 15 period.

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

3 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code
4 § 226, causing injury and damages to the PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
6 expended calculating the correct rates for the overtime worked and the amount of employment
7 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
8 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
10 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
11 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
12 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
13 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

18 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
19 **Defendants)**

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

23 104. Cal. Lab. Code § 200 provides that:

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

1 105. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14 107. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 108. Cal. Lab. Code § 203 provides:

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

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

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

PRAYER FOR RELIEF

1 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
2 severally, as follows:

3
4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 9 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
10 withheld from compensation due to PLAINTIFF and the other members of the
11 CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANTS' violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum wages, overtime wages, reporting time wages, unreimbursed
21 expenses, and other compensation due to PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
23 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and

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.

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: February 10 , 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: February 10, 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiff