

**SUMMONS
(CITACION JUDICIAL)**

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

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

T & K, L.P., a California Limited Partnership; and DOES 1-50, Inclusive,

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

JAMES E. AGUILAR, an individual, on behalf of himself and on behalf of all persons similarly situated,

E-FILED
7/23/2021 4:37 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV384674
Reviewed By: R. Walker
Envelope: 6916319

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): Santa Clara - Downtown
191 North First Street
San Jose, CA 95113

Case Number (Número del Caso):
21CV384674

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. Zakay Law Group, APLC. 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 T: 619-255-9047

DATE: 7/23/2021 4:37 PM Clerk of Court Clerk, by R. Walker, 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**
2 Shani O. Zakay (State Bar #277924)
3 Jackland K. Hom (State Bar #327243)
4 3990 Old Town Avenue, Suite C204
5 San Diego, CA 92110
6 Telephone: (619)255-9047; Facsimile: (858) 404-9203

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11 San Diego, CA 92110
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13 Attorneys for Plaintiffs

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

16 JAMES E. AGUILAR, an individual, on
17 behalf of himself and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 v.

21 T & K, L.P., a California Limited
22 Partnership; and DOES 1-50, Inclusive,

23 DEFENDANTS.

E-FILED
7/23/2021 4:37 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV384674
Reviewed By: R. Walker

Case No: **21CV384674**

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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 8) FAILURE TO REIMURSE EXMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff James E. Aguilar, an individual, (“PLAINTIFFS”), on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant T & K, L.P. (“DEFENDANT”) is California Limited Partnership and
6 at all relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California.

8 2. DEFENDANT operates a chain of Taco Bell franchised restaurants throughout
9 California.

10 3. Plaintiff Aguilar was employed by DEFENDANTS in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from August 2020
12 to March 2021.

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

20 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
21 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
22 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT uniform policy
23 and practice which failed to lawfully and compensate these employees for all their time worked.
24 DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair and deceptive
25 business practice whereby DEFENDANT retained and continues to retain wages due to
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
28 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and
2 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

19 **THE CONDUCT**

20 8. Pursuant to California Labor Code Section 204(d), “wages or weekly, biweekly,
21 or semimonthly payroll if the wages are paid not more than seven calendar days following the
22 close of the payroll period.” From time to time, DEFENDANT paid PLAINTIFFS and other
23 CALIFORNIA CLASS Members more than seven calendar days following the close of the
24 payroll period, late, and in violation of Labor Code Section 204(d).

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

1 required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all
2 the time they were under DEFENDANT control. Specifically, from time to time, PLAINTIFFS
3 performed work before and after the beginning of their shift, and during what was supposed to be
4 PLAINTIFFS' off-duty meal breaks, spending time under the DEFENDANT control for which
5 they were not compensated. As a result, the PLAINTIFFS and other CALIFORNIA CLASS
6 Members forfeited minimum wage and overtime compensation by regularly working without their
7 time being accurately recorded and without compensation at the applicable minimum wage and
8 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other
9 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
10 records.

11 10. State law provides that employees must be paid overtime at one-and-one-half times
12 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were
13 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
14 employee's performance.

15 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
16 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
17 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
18 performance for DEFENDANTS, including for referrals. The non-discretionary incentive
19 program provided all employees paid on an hourly basis with incentive compensation when the
20 employees met the various performance goals set by DEFENDANTS. However, when
21 calculating the regular rate of pay in order to pay overtime, double time, and/or sick time to
22 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANTS failed to include the
23 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating
24 overtime, double time, and/or sick time pay. Management and supervisors described the incentive
25 program to potential and new employees as part of the compensation package. However,
26 DEFENDANTS failed to include incentive compensation into the "regular rate of pay" for
27 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
28 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the "regular rate

1 of pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation,
2 double time compensation, and/or sick time compensation, to PLAINTIFFS and other
3 CALIFORNIA CLASS Members by DEFENDANTS.

4 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
5 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
6 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
7 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
8 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
9 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
10 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS’ timekeeping
11 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
12 these employees for all their time worked, including the applicable overtime compensation for
13 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
14 time to time, forfeited compensation for their time worked by working without their time being
15 accurately recorded and without compensation at the applicable overtime rates.

16 13. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members’
18 time being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful
19 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
20 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
21 receiving an off-duty meal break.

22 14. As a result of their rigorous work schedules, PLAINTIFFS and other
23 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks
24 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and
25 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal
26 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS
27 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to

1 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
2 each workday in which these employees were required by DEFENDANTS to work ten (10) hours
3 of work. DEFENDANTS' policy caused PLAINTIFFS and other CALIFORNIA CLASS
4 Members to work off-the-clock during what was supposed to be their off-duty meal periods.
5 PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
7 and practice.

8 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
9 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
10 without being provided ten (10) minute rest periods. Further, these employees were denied their
11 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
12 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
13 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
14 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
15 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
16 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
17 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
18 on-duty, on-call, and subject to DEFENDANTS' control in accordance with DEFENDANTS'
19 policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with
20 one-hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and other
21 CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed to be
22 their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and other
23 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
24 DEFENDANTS and DEFENDANTS' managers.

25 16. Under California law, every employer shall pay to each employee, on the
26 established payday for the period involved, not less than the applicable minimum wage for all
27 hours worked in the payroll period, whether the remuneration is measured by time, piece,
28 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time

1 during which an employee is subject to the control of an employer and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.” PLAINTIFFS and
3 other CALIFORNIA CLASS Members were from time to time required to perform work for
4 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
5 breaks. DEFENDANTS failed to compensate PLAINTIFFS and other CALIFORNIA CLASS
6 Members for any of the time spent under DEFENDANTS’ control while working off-the-clock.
7 As such, DEFENDANTS failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
8 the applicable minimum wage for all hours worked in a payroll period.

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

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

28

1 19. California Labor Code Section 226 requires an employer to furnish its employees
2 an accurate itemized *paper* statement in writing showing (1) gross wages earned, (2) total hours
3 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
4 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
5 name 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 20. Aside from the violations listed herein, DEFENDANTS, from time to time, failed
10 to issue to PLAINTIFFS an itemized *paper* wage statement that lists all the requirements under
11 California Labor Code 226 *et seq.* DEFENDANTS also from time to time failed to, from time to
12 time, provide PLAINTIFFS and the CALIFORNIA CLASS Members with the option to elect to
13 receive paper wage statements. As a result, from time to time DEFENDANTS provided
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which
15 violated Cal. Lab. Code § 226.

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

27 22. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
28 Members as a business expense, were required by DEFENDANT to use their own vehicles and

1 personal cellular phones as a result of and in furtherance of their job duties as employees for
2 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated
3 with the use of their personal vehicles and cellular phones for DEFENDANT's benefit.
4 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
5 DEFENDANT to use their personal cell phones for work related issues and were included on a
6 group text-message whereby information was exchanged. Furthermore PLAINTIFFS and other
7 CALIFORNIA CLASS Members were required to drive their own car during work hours to get
8 food and supplies, without being reimbursed for mileage. As a result, in the course of their
9 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
10 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
11 related to the use of their personal vehicles and cellular phones all on behalf of and for the benefit
12 of DEFENDANT.

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

24 24. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
25 take off duty meal and rest breaks and was not fully relieved of duty for their rest and meal periods.
26 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five
27 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed
28 to provide PLAINTIFFS with a second off-duty meal period each workday in which they were

1 required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided
2 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call, for
3 the rest break. PLAINTIFFS therefore forfeited meal and rest breaks without additional
4 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
5 Moreover, DEFENDANTS also provided PLAINTIFFS with a paystub that failed to accurately
6 display PLAINTIFFS' correct rates of pay, time worked and wages, as well as payments for
7 missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To
8 date, DEFENDANTS have not fully paid PLAINTIFFS the overtime compensation still owed to
9 them or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
10 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

11 **JURISDICTION AND VENUE**

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

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

21 **THE CALIFORNIA CLASS**

22 27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
25 individuals who are or previously were employed by DEFENDANT in California and classified
26 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
27 four (4) years prior to the filing of the original complaint and ending on the date as determined by
28

1 the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
2 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 29. DEFENDANTS, 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 DEFENDANTS systematically failed to record all meal
10 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,
11 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
12 this work and permitted or suffered to permit this work.

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

23 31. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 32. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
26 California law by:

- 27 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
28 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company

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

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

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

1 CALIFORNIA CLASS and thereby systematically underpaid compensation to
2 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic
3 injury as a result of DEFENDANTS' employment practices. PLAINTIFFS, like
4 all the other members of the CALIFORNIA CLASS, were subjected to the uniform
5 employment practices of DEFENDANTS and was a non-exempt employee paid
6 on an hourly basis and paid additional non-discretionary incentive wages who was
7 subjected to the DEFENDANTS' practice and policy which failed to pay the
8 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
9 worked by the CALIFORNIA CLASS and thereby systematically under pays
10 overtime compensation to the CALIFORNIA CLASS. PLAINTIFFS and the
11 members of the CALIFORNIA CLASS were and are similarly or identically
12 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
13 misconduct engaged in by DEFENDANTS; and

14 d. The representative PLAINTIFFS will fairly and adequately represent and protect
15 the interest of the CALIFORNIA CLASS, and has retained counsel who are
16 competent and experienced in Class Action litigation. There are no material
17 conflicts between the claims of the representative PLAINTIFFS and the members
18 of the CALIFORNIA CLASS that would make class certification inappropriate.
19 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
20 CALIFORNIA CLASS Members.

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

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

26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA CLASS which would establish incompatible
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- standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;
- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANTS’ policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA 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 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

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CALIFORNIA 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 CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

35. 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

1 because the DEFENDANTS' employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

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

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

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

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

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

1 h. Whether DEFENDANTS' conduct was willful.

2 42. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
3 under California law by:

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

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

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

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

20 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
21 employee is discharged or quits from employment, the employer must pay the
22 employee all wages due without abatement, by failing to tender full payment
23 and/or restitution of wages owed or in the manner required by California law to
24 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
25 their employment.

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

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- 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 PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS’ practice and policy which failed to pay the correct rate of overtime wages and total amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANTS’ employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- d. The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have 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 LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

7 i. Inconsistent or varying adjudications with respect to individual members
8 of the CALIFORNIA LABOR SUB-CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA LABOR SUB-CLASS; or

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

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

21 c. Common questions of law and fact predominate as to the members of the
22 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
23 of California Law as listed above, and predominate over any question affecting
24 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
25 Action is superior to other available methods for the fair and efficient adjudication
26 of the controversy, including consideration of:

27 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
28 in individually controlling the prosecution or defense of separate actions in

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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 DEFENDANTS; and/or,

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

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

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- 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 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have 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 DEFENDANTS. The CALIFORNIA

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
3 PERIOD; and

- 4 i. Class treatment provides manageable judicial treatment calculated to bring an
5 efficient and rapid conclusion to all litigation of all wage and hour related claims
6 arising out of the conduct of DEFENDANTS as to the members of the
7 CALIFORNIA LABOR SUB-CLASS.

8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL BUSINESS PRACTICES**

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

11 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

15 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
16 Code § 17021.

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

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

28 49. By the conduct alleged herein, DEFENDANTS have engaged and continues to
engage in a business practice which violates California law, including but not limited to, the
applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and

1 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
2 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

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

10 51. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
11 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFFS, and
12 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
13 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
14 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
15 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
16 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
17 wrongfully withheld.

18 52. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
19 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANTS.

22 53. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
23 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

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

6 56. By and through the unlawful and unfair business practices described herein,
7 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
8 the other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
9 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
10 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
11 against competitors who comply with the law.

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

17 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
18 to, and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages.

22 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

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

13 62. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
16 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

19 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 66. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and
25 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
26 amount of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was
27 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

67. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
3 pay.

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

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

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

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

21 72. DEFENDANTS knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
23 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
25 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
27 minimum wages for their time worked.

28 73. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
time worked and provide them with requisite compensation, DEFENDANTS acted and continues

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

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

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20 **THIRD CAUSE OF ACTION**

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

23 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **DEFENDANTS)**

25 75. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
27 this Complaint.
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1 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
3 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
4 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the
5 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
7 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

18 80. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and
19 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
20 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
21 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
22 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFFS and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact
24 failed to pay these employees the correct applicable overtime wages for all overtime worked.

25 81. 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 denied accurate compensation to
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or
forty (40) hours in any workweek.

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

7 83. 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 full compensation for all overtime worked.

10 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
11 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
12 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and
13 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid
14 collective bargaining agreement that would preclude the causes of action contained herein this
15 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the
16 CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable,
17 non-waivable rights provided by the State of California.

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

21 86. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
22 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
24 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
27 business records and witnessed by employees.

28 87. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA

1 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
2 which are presently unknown to them and which will be ascertained according to proof at trial.

3 88. DEFENDANTS knew or should have known that PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
5 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
7 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
9 overtime rate.

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

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

FOURTH CAUSE OF ACTION

1 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
2 **(Cal. Lab. Code §§ 226.7 & 512)**
3 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
4 **DEFENDANTS)**

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)
(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)

95. PLAINTIFFS, 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.

96. PLAINTIFFS 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, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided PLAINTIFFS 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.

97. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS 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.

98. As a proximate result of the aforementioned violations, PLAINTIFFS 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.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS
(Cal. Lab. Code §§ 226 and 226.2)

1 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
2 **DEFENDANTS)**

3 99. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
5 paragraphs of this Complaint.

6 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
7 “accurate itemized” statement in writing showing:

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

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

- 28 a. The total hours of compensable rest and recovery periods, the rate of
compensation, and the gross wages paid for those periods during the

1 pay period; and

2 b. The total hours of other nonproductive time, the rate of
3 compensation, and the gross wages paid for that time during the pay
4 period.

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

19 103. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct rates for the overtime worked and the amount of employment
23 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
24 to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
26 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
27 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
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1 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and
2 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN DUE**

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

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

8 104. 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.

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

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

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

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

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

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

109. Cal. Lab. Code § 203 provides:

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

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

9 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
10 members of the CALIFORNIA LABOR SUB-CLASS whose employment has ended,
11 PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time of
12 termination for all employees who terminated employment during the CALIFORNIA LABOR
13 SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest
14 and statutory costs as allowed by law.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

17 **(Cal. Lab. Code § 2802)**

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

19 112. 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.

22 113. Cal. Lab. Code § 2802 provides, in relevant part, that:

23 An employer shall indemnify his or her employee for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her
25 duties, or of his or her obedience to the directions of the employer, even though
26 unlawful, unless the f obeying the directions, believed them to be unlawful.

27 114. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
28 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
members for required expenses incurred in the discharge of their job duties for DEFENDANT's
benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
CLASS members for expenses which included, but were not limited to, costs related to using their
personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use

1 their personal vehicles and cell phones to respond to work related issues. DEFENDANT's
2 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
3 LABOR SUB-CLASS members for expenses resulting from using their personal vehicles and
4 cellular phones for DEFENDANT within the course and scope of their employment for
5 DEFENDANT. These expenses were necessary to complete their principal job duties.
6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
7 Although these expenses were necessary expenses incurred by PLAINTIFF and the
8 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
9 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

11 115. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
12 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
13 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
14 statutory rate and costs under Cal. Lab. Code § 2802.

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16 **NINTH CAUSE OF ACTION**

17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

18 **(Cal. Lab. Code §§2698 et seq.)**

19 **(Alleged by PLAINTIFF against all Defendants)**

20 116. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 117. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
24 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
25 fundamentally a law enforcement action designed to protect the public and not to benefit private
26 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
27 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
28 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved

1 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
2 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

3 118. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, bring this Representative Action on behalf of the State of California with respect to
6 themselves and all individuals who are or previously were employed by DEFENDANT and
7 classified as non-exempt employees in California during the time period of May 19, 2020 until
8 the present (the "AGGRIEVED EMPLOYEES").

9 119. On May 19, 2021, PLAINTIFF gave written notice by certified mail to the Labor
10 and Workforce Development Agency (the "Agency") and the employer of the specific
11 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
12 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
13 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
14 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
15 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
16 EMPLOYEES as herein defined.

17 120. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to properly record and pay
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
20 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
21 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
22 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
23 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
24 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,
25 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to
26 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
27 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
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1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
2 the other AGGRIEVED EMPLOYEES.

3
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum wages, overtime wages, and other compensation due to
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
25 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
26 thereon at the statutory rate;
- 27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

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- 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 amount of expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit;
- f. 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 behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

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4. 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.

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DATED: July 23, 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: July 23, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client 38101

May 19, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

<p>T & K, L.P. c/o TAYLOR LOESCH 236 RESERVATION ROAD MARINA CA 93933 <i>Via Certified Mail with Return Receipt</i> <i>No. 7021 0350 0001 8165 1873</i></p>	
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Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our offices represent Plaintiffs James E. Aguilar and Pamela Cazares (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against T & K, L.P. (“Defendant”). Plaintiff James Aguilar was employed by Defendant in California between August 2020 and March 2021. Plaintiff Pamela Cazares was employed by Defendant in California from November 2020 to March 2021. Plaintiffs were paid on an hourly basis and was entitled to legally required meal and rest periods. At all times during Plaintiffs’ employment, Defendant failed to, among other things, provide Plaintiffs, and all those similarly situated, with all legally mandated off-duty meal and rest periods. As a consequence, Plaintiffs contend that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiffs contend that Defendant conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendants during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiffs, and (v) sets forth the illegal practices used by Defendants. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Plaintiffs

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9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 JAMES E. AGUILAR, an individual;
13 PAMELA CAZARES, an individual, on
behalf of themselves and on behalf of all
14 persons similarly situated,

15 Plaintiffs,

16 v.

17 T & K, L.P., a California Limited
Partnership; and DOES 1-50, Inclusive,

18 DEFENDANTS.
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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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 8) FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

DEMAND FOR A JURY TRIAL

1 Plaintiff James E. Aguilar, an individual, and Pamela Cazares, an individual, (collectively
2 “PLAINTIFFS”), on behalf of themselves and all other similarly situated current and former
3 employees, allege on information and belief, except for their own acts and knowledge which are
4 based on personal knowledge, the following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant T & K, L.P. (“DEFENDANT”) is California Limited Partnership and
7 at all relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT operates a chain of Taco Bell franchised restaurants throughout
10 California.

11 3. Plaintiff Aguilar was employed by DEFENDANTS in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from August 2020
13 to March 2021. Plaintiff Cazares was employed by DEFENDANTS in California as a non-exempt
14 employee entitled to minimum wages, overtime pay and meal and rest periods from November
15 2020 to March 2021.

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

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

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

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

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

22 **THE CONDUCT**

23 8. Pursuant to California Labor Code Section 204(d), “wages or weekly, biweekly,
24 or semimonthly payroll if the wages are paid not more than seven calendar days following the
25 close of the payroll period.” From time to time, DEFENDANT paid PLAINTIFFS and other
26 CALIFORNIA CLASS Members more than seven calendar days following the close of the
27 payroll period, late, and in violation of Labor Code Section 204(d).

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1 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
2 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,
3 meaning the time during which an employee is subject to the control of an employer, including
4 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
5 required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all
6 the time they were under DEFENDANT control. Specifically, from time to time, PLAINTIFFS
7 performed work before and after the beginning of their shift, and during what was supposed to be
8 PLAINTIFFS' off-duty meal breaks, spending time under the DEFENDANT control for which
9 they were not compensated. As a result, the PLAINTIFFS and other CALIFORNIA CLASS
10 Members forfeited minimum wage and overtime compensation by regularly working without their
11 time being accurately recorded and without compensation at the applicable minimum wage and
12 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other
13 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
14 records.

15 10. State law provides that employees must be paid overtime at one-and-one-half times
16 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were
17 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
18 employee's performance.

19 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
20 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
21 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
22 performance for DEFENDANTS, including for referrals. The non-discretionary incentive
23 program provided all employees paid on an hourly basis with incentive compensation when the
24 employees met the various performance goals set by DEFENDANTS. However, when
25 calculating the regular rate of pay in order to pay overtime, double time, and/or sick time to
26 PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANTS failed to include the
27 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating
28 overtime, double time, and/or sick time pay. Management and supervisors described the incentive

1 program to potential and new employees as part of the compensation package. However,
2 DEFENDANTS failed to include incentive compensation into the “regular rate of pay” for
3 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
4 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the “regular rate
5 of pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation,
6 double time compensation, and/or sick time compensation, to PLAINTIFFS and other
7 CALIFORNIA CLASS Members by DEFENDANTS.

8 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
9 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
10 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
11 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
12 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
13 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
14 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS’ timekeeping
15 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
16 these employees for all their time worked, including the applicable overtime compensation for
17 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
18 time to time, forfeited compensation for their time worked by working without their time being
19 accurately recorded and without compensation at the applicable overtime rates.

20 13. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
21 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members’
22 time being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful
23 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
24 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
25 receiving an off-duty meal break.

26 14. As a result of their rigorous work schedules, PLAINTIFFS and other
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks
28 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and

1 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal
2 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS
3 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
4 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
5 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
6 each workday in which these employees were required by DEFENDANTS to work ten (10) hours
7 of work. DEFENDANTS' policy caused PLAINTIFFS and other CALIFORNIA CLASS
8 Members to work off-the-clock during what was supposed to be their off-duty meal periods.
9 PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
10 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
11 and practice.

12 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
13 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
14 without being provided ten (10) minute rest periods. Further, these employees were denied their
15 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
16 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
17 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
18 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
19 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
20 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
21 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
22 on-duty, on-call, and subject to DEFENDANTS' control in accordance with DEFENDANTS'
23 policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with
24 one-hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and other
25 CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed to be
26 their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and other
27 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
28 DEFENDANTS and DEFENDANTS' managers.

1 16. Under California law, every employer shall pay to each employee, on the
2 established payday for the period involved, not less than the applicable minimum wage for all
3 hours worked in the payroll period, whether the remuneration is measured by time, piece,
4 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
5 during which an employee is subject to the control of an employer and includes all the time the
6 employee is suffered or permitted to work, whether or not required to do so.” PLAINTIFFS and
7 other CALIFORNIA CLASS Members were from time to time required to perform work for
8 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
9 breaks. DEFENDANTS failed to compensate PLAINTIFFS and other CALIFORNIA CLASS
10 Members for any of the time spent under DEFENDANTS’ control while working off-the-clock.
11 As such, DEFENDANTS failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
12 the applicable minimum wage for all hours worked in a payroll period.

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

22 18. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
23 Members worked during what was supposed to be their meal breaks or otherwise off the clock,
24 and/or when PLAINTIFFS earned non-discretionary incentive compensation in the same pay
25 period they earned overtime or double time, DEFENDANTS also failed to provide PLAINTIFFS
26 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
27 which failed to show, among other things, the correct rates of pay, the correct time worked,
28 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in

1 any workweek, and the gross wages paid for those periods during the pay period, and the correct
2 penalty payments or missed meal and rest periods in violation of California Labor Code Sections
3 226 and 226.2.

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

12 20. Aside from the violations listed herein, DEFENDANTS, from time to time, failed
13 to issue to PLAINTIFFS an itemized *paper* wage statement that lists all the requirements under
14 California Labor Code 226 *et seq.* DEFENDANTS also from time to time failed to, from time to
15 time, provide PLAINTIFFS and the CALIFORNIA CLASS Members with the option to elect to
16 receive paper wage statements. As a result, from time to time DEFENDANTS provided
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which
18 violated Cal. Lab. Code § 226.

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

3 22. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own vehicles and
5 personal cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal vehicles and cellular phones for DEFENDANT's benefit.
8 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
9 DEFENDANT to use their personal cell phones for work related issues and were included on a
10 group text-message whereby information was exchanged. Furthermore PLAINTIFFS and other
11 CALIFORNIA CLASS Members were required to drive their own car during work hours to get
12 food and supplies, without being reimbursed for mileage. As a result, in the course of their
13 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
14 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
15 related to the use of their personal vehicles and cellular phones all on behalf of and for the benefit
16 of DEFENDANT.

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

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1 24. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
2 take off duty meal and rest breaks and was not fully relieved of duty for their rest and meal periods.
3 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five
4 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed
5 to provide PLAINTIFFS with a second off-duty meal period each workday in which they were
6 required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided
7 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call, for
8 the rest break. PLAINTIFFS therefore forfeited meal and rest breaks without additional
9 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
10 Moreover, DEFENDANTS also provided PLAINTIFFS with a paystub that failed to accurately
11 display PLAINTIFFS' correct rates of pay, time worked and wages, as well as payments for
12 missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To
13 date, DEFENDANTS have not fully paid PLAINTIFFS the overtime compensation still owed to
14 them or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
15 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

17 25. 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 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
23 maintained offices and facilities in this County and/or conduct substantial business in this County,
24 and (ii) committed the wrongful conduct herein alleged in this County against members of the
25 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

26 **THE CALIFORNIA CLASS**

27 27. 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 28. 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 29. DEFENDANTS, 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 DEFENDANTS systematically failed to record all meal
14 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,
15 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
16 this work and permitted or suffered to permit this work.

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

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

1 32. DEFENDANTS 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 pay the
9 correct overtime rate to PLAINTIFFS and the CALIFORNIA CLASS members
- 10 c. Committing an act of unfair competition in violation of the California Unfair
11 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
12 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA
13 CLASS members; and,
- 14 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
15 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
16 company policies, practices and procedures that uniformly and systematically
17 failed to record and pay PLAINTIFFS and other members of the CALIFORNIA
18 CLASS for all time worked, including minimum wages owed and overtime wages
19 owed for work performed by these employees.

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

- 22 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
23 joinder of all such persons is impracticable and the disposition of their claims as a
24 class will benefit the parties and the Court;
- 25 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
26 raised in this Complaint are common to the CALIFORNIA CLASS will apply
27 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 DEFENDANTS’ 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. PLAINTIFF sustained economic injury as a result of DEFENDANTS’ employment practices. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANTS and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS’ practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically under pays overtime compensation to the CALIFORNIA CLASS. 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 DEFENDANTS; 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.

34. 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:

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- 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;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANTS' policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available

1 methods for the fair and efficient adjudication of the controversy, including
2 consideration of:

3 i. The interests of the members of the CALIFORNIA CLASS in individually
4 controlling the prosecution or defense of separate actions in that the
5 substantial expense of individual actions will be avoided to recover the
6 relatively small amount of economic losses sustained by the individual
7 CALIFORNIA CLASS Members when compared to the substantial
8 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 CLASS, which would establish
13 incompatible standards of conduct for the DEFENDANTS; and/or;

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

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

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

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

- 5 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
6 over any question affecting only individual CALIFORNIA CLASS Members
7 because the DEFENDANTS' employment practices are uniform and
8 systematically applied with respect to the CALIFORNIA CLASS.
- 9 b. A Class Action is superior to any other available method for the fair and efficient
10 adjudication of the claims of the members of the CALIFORNIA CLASS because
11 in the context of employment litigation a substantial number of individual
12 CALIFORNIA CLASS Members will avoid asserting their rights individually out
13 of fear of retaliation or adverse impact on their employment;
- 14 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
15 to bring all members of the CALIFORNIA CLASS before the Court;
- 16 d. PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to
17 obtain effective and economic legal redress unless the action is maintained as a
18 Class Action;
- 19 e. There is a community of interest in obtaining appropriate legal and equitable relief
20 for the acts of unfair competition, statutory violations and other improprieties, and
21 in obtaining adequate compensation for the damages and injuries which
22 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 23 f. There is a community of interest in ensuring that the combined assets of
24 DEFENDANTS are sufficient to adequately compensate the members of the
25 CALIFORNIA CLASS for the injuries sustained;
- 26 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
27 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
28 with respect to the CALIFORNIA CLASS as a whole;

- 1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANTS; and
- 3 i. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANTS as to the members of the
6 CALIFORNIA CLASS.

7 36. DEFENDANTS maintain records from which the Court can ascertain and identify
8 by job title each of DEFENDANTS' employees who as have been systematically, intentionally
9 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
10 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles
11 of similarly situated employees when they have been identified.

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

21 38. DEFENDANTS, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
25 worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 and other wages and premiums owed to these employees, even though DEFENDANTS enjoyed
27 the benefit of this work, required employees to perform this work and permitted or suffered to
28 permit this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR

1 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the
2 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
3 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
4 CLASS PERIOD should be adjusted accordingly.

5 39. DEFENDANTS maintain records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANTS' employees who have been systematically,
7 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
8 procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include
9 any additional job titles of similarly situated employees when they have been identified.

10 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 14 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
15 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
16 missed meal and rest breaks in violation of the California Labor Code and
17 California regulations and the applicable California Wage Order;
- 18 b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
19 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
20 thirty (30) minute meal breaks and rest periods;
- 21 c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
22 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
23 statements;
- 24 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation,
25 including at the correct rate, to members of the CALIFORNIA LABOR SUB-
26 CLASS in violation of the California Labor Code and California regulations and
27 the applicable California Wage Order;

- 1 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 2 compensation for time worked, including overtime worked, under the overtime
- 3 pay requirements of California law;
- 4 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 5 conduct;
- 6 g. The proper measure of damages and penalties owed to the members of the
- 7 CALIFORNIA LABOR SUB-CLASS; and
- 8 h. Whether DEFENDANTS' conduct was willful.

9 42. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
10 under California law by:

- 11 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS
- 12 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 13 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 14 § 1194;
- 15 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 16 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
- 17 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 18 Cal. Lab. Code §§ 1194 and 1197;
- 19 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
- 20 and the other members of the CALIFORNIA CLASS with all legally required off-
- 21 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest
- 22 breaks;
- 23 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
- 24 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 25 statement in writing showing all accurate rates in effect during the pay period and
- 26 the corresponding amount of time worked at each overtime rate by the employee;
- 27 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 28 employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment
2 and/or restitution of wages owed or in the manner required by California law to
3 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
4 their employment.

5 43. 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 and paid additional non-discretionary incentive
19 wages who was subjected to the DEFENDANTS' practice and policy which failed
20 to pay the correct rate of overtime wages and total amount of wages due to the
21 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
22 as a result of DEFENDANTS' employment practices. PLAINTIFFS and the
23 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
24 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
25 of misconduct engaged in by DEFENDANTS; and
- 26 d. The representative PLAINTIFFS will fairly and adequately represent and protect
27 the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained
28 counsel who are competent and experienced in Class Action litigation. There are

1 no material conflicts between the claims of the representative PLAINTIFFS and
2 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
3 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
4 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
5 Members.

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

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

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

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

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

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

1 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
2 Action is superior to other available methods for the fair and efficient adjudication
3 of the controversy, including consideration of:

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

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

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

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

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

27 iv. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will obviate

1 the need for unduly and unnecessary duplicative litigation that is likely to
2 result in the absence of certification of this action pursuant to Cal. Code of
3 Civ. Proc. § 382.

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

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

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the 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 DEFENDANTS. 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 DEFENDANTS 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 DEFENDANTS)**

17 46. 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 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

22 48. 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 49. By the conduct alleged herein, DEFENDANTS have 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, and
9 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
10 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
11 constitute unfair competition, including restitution of wages wrongfully withheld.

12 50. By the conduct alleged herein, DEFENDANTS' 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 51. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
19 fraudulent in that DEFENDANTS' 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 52. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
27 unfair and deceptive in that DEFENDANTS' 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 DEFENDANTS.

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

6 54. 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 55. 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 56. By and through the unlawful and unfair business practices described herein,
15 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
16 the other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
17 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
18 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
19 against competitors who comply with the law.

20 57. 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 58. 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 DEFENDANTS have 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 59. 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 DEFENDANTS from
6 engaging in any unlawful and unfair business practices in the future.

7 60. 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 DEFENDANTS. 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 DEFENDANTS 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 **DEFENDANTS)**

19 61. 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 62. PLAINTIFFS 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 DEFENDANTS' failure to accurately
25 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

26 63. 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.
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1 64. 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 65. 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 66. DEFENDANTS 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 67. DEFENDANTS' 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 68. In committing these violations of the California Labor Code, DEFENDANTS
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 DEFENDANTS 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 69. As a direct result of DEFENDANTS' 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 DEFENDANTS.

25 70. 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.

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1 71. By virtue of DEFENDANTS' 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 72. DEFENDANTS knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
8 worked. DEFENDANTS 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 DEFENDANTS 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 73. 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, DEFENDANTS 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 74. 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 DEFENDANTS, in a sum as provided
24 by 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, DEFENDANTS' 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. DEFENDANTS' 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 **DEFENDANTS)**

9 75. 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 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
13 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
14 and the Industrial Welfare Commission requirements for DEFENDANTS' 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 DEFENDANTS' 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 77. 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 78. 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 79. 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 80. DEFENDANTS 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, DEFENDANTS' 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 DEFENDANTS in fact
7 failed to pay these employees the correct applicable overtime wages for all overtime worked.

8 81. DEFENDANTS' 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 82. In committing these violations of the California Labor Code, DEFENDANTS
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. DEFENDANTS 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 83. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
22 full compensation for all overtime worked.

23 84. 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 PLAINTIFF
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 DEFENDANTS' violations of non-negotiable,
2 non-waivable rights provided by the State of California.

3 85. 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 86. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
7 the 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 87. By virtue of DEFENDANTS' 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 88. DEFENDANTS 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. 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
24 overtime rate.

25 89. 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, DEFENDANTS
28 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and

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

5 90. 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 DEFENDANTS, 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, DEFENDANTS'
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. DEFENDANTS' 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 **DEFENDANTS)**

21 91. 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 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
25 the legally required off-duty meal breaks to PLAINTIFF 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 PLAINTIFF 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 DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
7 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
8 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
9 DEFENDANTS' premises for those rest breaks.

10 97. DEFENDANTS further violated California Labor Code §§ 226.7 and the
11 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR
12 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
13 Wage 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 98. 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 PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

23 99. 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.

26 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
27 "accurate itemized" statement in writing showing:

- 28 a. Gross wages earned;

- b. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

102. When DEFENDANTS did not accurately record PLAINTIFFS’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with

1 complete and accurate wage statements which failed to show, among other things, the correct
2 overtime rate, the correct number of hours worked, missed meal and rest periods, owed to
3 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that
4 every employer shall furnish each of his or her employees with an accurate itemized paper wage
5 statement in writing showing, among other things, gross wages earned and all applicable hourly
6 rates in effect during the pay period and the corresponding amount of time worked at each hourly
7 rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to
8 PLAINTIFFS an itemized paper wage statement that lists all the requirements under California
9 Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFFS
10 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
11 Lab. Code § 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

6 104. 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.

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

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

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

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

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22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the
26 time of quitting. Notwithstanding any other provision of law, an employee who
27 quits without providing a 72-hour notice shall be entitled to receive payment by
28 mail if he or she so requests and designates a mailing address. The date of the

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

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

5 109. Cal. Lab. Code § 203 provides:

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

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

15 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
16 members of the CALIFORNIA LABOR SUB-CLASS whose employment has ended,
17 PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time of
18 termination for all employees who terminated employment during the CALIFORNIA LABOR
19 SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest
20 and statutory costs as allowed by law.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

23 **(Cal. Lab. Code § 2802)**

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

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

28 113. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

22 115. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
23 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
24 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
25 statutory rate and costs under Cal. Lab. Code § 2802.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly and severally, as follows:

- 1. On behalf of the CALIFORNIA CLASS:
 - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT’S’ ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a 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, and other compensation due to PLAINTIFF 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

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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 amount of expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit;
- f. 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: _____, 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: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs