

SUMMONS (CITACION JUDICIAL)

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

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

07/24/2019 at 09:55:00 AM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

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

ALL AMERICAN PRIVATE SECURITY, LLC, a Limited Liability Company; and DOES 1-50, Inclusive

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

EZZAT MENIAS an individual on behalf of himself and on behalf of all persons similarly situated

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

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

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

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

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

The name and address of the court is: Orange County Superior Court
(El nombre y dirección de la corte es): Civil Complex Center
700 Civic Center Drive West Santa Ana, CA 92704
751 West Santa Ana Blvd. Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):
30-2019-01085120-CU-OE-CXC

Judge William Cluster

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. 3990 Old Town Avenue, Suite C204 San Diego, California 92110 Telephone: 619-255- 9047

DATE: 07/24/2019
(Fecha)

DAVID H. YAMASAKI, Clerk of the Court

Clerk, by
(Secretario)

Abuse

, Deputy
(Adjunto)

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

Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- 4. by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
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5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
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9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF ORANGE

11 EZZAT MENIAS an individual on behalf of
12 himself and on behalf of all persons similarly
situated,

13
14 Plaintiffs,
v.

15 ALL AMERICAN PRIVATE SECURITY,
16 LLC, a Limited Liability Company; and DOES
1-50, Inclusive,

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18 Defendants.
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Case No: 30-2019-01085120-CU-OE-CXC
Assigned: Judge William Claster Dept: CX104
CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq;*
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq;*
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1
2 Plaintiff Ezzat Menias (“PLAINTIFF”), an individual, on behalf of himself and all other
3 similarly situated current and former employees, allege on information and belief,
4 except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant All American Private Security, LLC (“DEFENDANT”) is a California
8 Limited Liability Company that at all relevant times mentioned herein conducted and continues
9 to conduct substantial and regular business throughout California.

10 2. DEFENDANT is a full service provider of premium security services.
11 DEFENDANTS also offers security training courses, which are paid for by DEFENDANT’s
12 employees.

13 3. PLAINTIFF was employed by DEFENDANT in California from March 2017 to
14 September 2018 as a Security Guard and was at all times classified by DEFENDANT as a non-
15 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
16 periods.

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

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

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

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

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

22 THE CONDUCT

23 8. PLAINTIFF'S Security Guard position was a non-exempt position and was in
24 fact classified as non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA
25 CLASS Members employed by DEFENDANTS performed manual tasks but were not paid the
26 overtime wages to which they were entitled because of DEFENDANT'S systematic policies and
27 practices of failing to correctly record all time worked, including overtime worked.
28 DEFENDANT failed to correctly pay overtime wages to PLAINTIFF and the other
CALIFORNIA CLASS Members in accordance with California law, and thereby systematically

1 underpaid overtime compensation to PLAINTIFF and the other CALIFORNIA CLASS
2 Members for their documented time worked, including overtime worked. As a result,
3 PLAINTIFF and the other CALIFORNIA CLASS Members worked more than eight (8) hours
4 in a workday and/or forty (40) hours in a workweek but were not fully compensated for
5 overtime worked as required by law.

6 9. Individuals in these Security Guard positions are and were employees who are
7 entitled to overtime compensation and prompt payment of amounts that the employer owes an
8 employee when the employee quits or is terminated, and other compensation and working
9 conditions that are prescribed by law. Although DEFENDANT required their employees
10 employed as Security Guards to work more than eight (8) hours in a workday and/or forty (40)
11 hours in a workweek from time to time, as a matter of company policy and practice,
12 DEFENDANT denied these employees the correct overtime compensation that the law requires.
13 PLAINTIFF and the CALIFORNIA CLASS Members work or worked in California and
14 DEFENDANT'S practices and procedures are and were common throughout California. As a
15 result of their rigorous work schedules.

16 10. As a result of their rigorous work schedules, PLAINTIFF and other
17 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
18 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFFS and
19 other CALIFORNIA CLASS Members are required to perform work as ordered by
20 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
21 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members
22 with a second off-duty meal period for some workdays in which these employees are required
23 by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to
24 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal
25 breaks is evidenced by DEFENDANT'S business records. PLAINTIFF and other members of
26 the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
27 accordance with DEFENDANT'S strict corporate policy and practice.
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1 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied their
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
5 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
6 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
7 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
8 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
9 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
10 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
11 periods by DEFENDANT and DEFENDANT’S managers.

12 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT also systematically
13 failed to record and pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount
14 of wages due for split-shift premiums. The applicable Industrial Welfare Commission Wage
15 Orders define a “split-shift” as a “work schedule, which is interrupted by non-paid, non-
16 working, periods established by the employer, other than bona fide rest or meal periods.” The
17 Industrial Welfare Commission Wage Orders further provide, “When an employee works a split
18 shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage
19 for that workday, except when the employee resides at the place of employment.”
20 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work split-shifts
21 throughout the CALIFORNIA CLASS PERIOD, but intentionally and unlawfully failed to pay
22 PLAINTIFF and the CALIFORNIA CLASS Members split-shift premium wages and failed to
23 pay PLAINTIFF and CALIFORNIA CLASS Members the correct overtime compensation for
24 hours worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result,
25 PLAINTIFF and the CALIFORNIA CLASS Members were underpaid during their employment
26 with DEFENDANT.

27 13. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice and procedure, intentionally, knowingly and systematically
2 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
3 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
4 purposefully avoid the payment for all time worked as required by California law which allows
5 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
6 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

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

20 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
21 CLASS Members as a business expense, were required by DEFENDANT to use their own
22 personal cellular phones as a result of and in furtherance of their job duties as employees for
23 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
24 associated with the use of their personal cellular phones for DEFENDANT’S benefit.
25 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
26 DEFENDANT to use their employment with DEFENDANT the PLAINTIFF and other
27 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
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1 included, but were not limited to, costs related to the use of their personal cellular phones all on
2 behalf of and for the benefit of DEFENDANT.

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

14 17. DEFENDANT also violated Cal. Lab Code Section 1198.5 by failing to respond
15 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
16 former employees) have the right to inspect personnel records maintained by the employer
17 "related to the employee's performance or to any grievance concerning the employee:"
18 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
19 requested his employment file via certified mail multiple times and DEFENDANT failed to
20 respond each time. As a result, PLAINTIFF is now entitled to statutory penalty of \$750 and an
21 award of attorneys' fees and costs for bringing this action.

22 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal and rest breaks to them as required by the applicable Wage Order and
24 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
25 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
26 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent
27 them from being relieved of all of their duties for the legally required off-duty meal periods. As
28 a result, DEFENDANT'S failure to provide PLAINTIFF with the legally required meal periods

1 is evidenced by DEFENDANT’S business records. To date, DEFENDANT has yet to pay
2 PLAINTIFF all of his overtime wages due to him and DEFENDANT has failed to pay any
3 penalty wages owed to them under California Labor Code Section 203. The amount in
4 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

5 **JURISDICTION AND VENUE**

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

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

16 **THE CALIFORNIA CLASS**

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

26 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

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

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

17 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
23 unfairly, and/or deceptively having in place a company policy, practice and
24 procedure that uniformly denied PLAINTIFF and the members of the
25 CALIFORNIA CLASS the correct overtime wages and split shift premiums and
26 otherwise violated applicable law; and

1 b. Committing an act of unfair competition in violation of the UCL, by failing to
2 provide mandatory meal and/or rest breaks to PLAINTIFF and the
3 CALIFORNIA CLASS members.

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

6 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
7 joinder of all such persons is impracticable and the disposition of their claims as
8 a class will benefit the parties and the Court;

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

12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
14 of the CALIFORNIA CLASS, was a Security Guard and was classified as non-
15 exempt employees paid on an hourly basis who were subjected to the
16 DEFENDANT’S deceptive practice and policy which failed to provide the
17 legally required meal and rest periods to the CALIFORNIA CLASS and thereby
18 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
19 CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S
20 employment practices. PLAINTIFF and the members of the CALIFORNIA
21 CLASS were and are similarly or identically harmed by the same unlawful,
22 deceptive, unfair and pervasive pattern of misconduct engaged in by
23 DEFENDANT; and

24 d. The representative PLAINTIFF will fairly and adequately represent and protect
25 the interest of the CALIFORNIA CLASS, and has retained counsel who are
26 competent and experienced in Class Action litigation. There are no material
27 conflicts between the claims of the representative PLAINTIFF and the members
28 of the CALIFORNIA CLASS that would make class certification inappropriate.

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Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

1 c. Common questions of law and fact exist as to the members of the CALIFORNIA
2 CLASS, with respect to the practices and violations of California law as listed
3 above, and predominate over any question affecting only individual
4 CALIFORNIA CLASS Members, and a Class Action is superior to other
5 available methods for the fair and efficient adjudication of the controversy,
6 including consideration of:

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

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

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

19 2. Adjudications with respect to individual members of the
20 CALIFORNIA CLASS would as a practical matter be dispositive
21 of the interests of the other members not parties to the
22 adjudication or substantially impair or impede their ability to
23 protect their interests;

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

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

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

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

14 b. A Class Action is superior to any other available method for the fair and efficient
15 adjudication of the claims of the members of the CALIFORNIA CLASS because
16 in the context of employment litigation a substantial number of individual
17 CALIFORNIA CLASS Members will avoid asserting their rights individually
18 out of fear of retaliation or adverse impact on their employment;

19 c. The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the Court;

21 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
22 obtain effective and economic legal redress unless the action is maintained as a
23 Class Action;

24 e. There is a community of interest in obtaining appropriate legal and equitable
25 relief for the acts of unfair competition, statutory violations and other
26 improprieties, and in obtaining adequate compensation for the damages and
27 injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA
28 CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

13 30. DEFENDANT maintains records from which the Court can ascertain and
14 identify by job title each of DEFENDANTS' employees who as have been systematically,
15 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 31. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
20 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
22 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
23 the filing of the complaint and ending on the date as determined by the Court (the
24 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
25 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly,
2 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to
3 correctly calculate compensation for the time worked by PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees,
5 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
6 this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied
7 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
8 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
9 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

12 33. DEFENDANT maintains records from which the Court can ascertain and
13 identify by name and job title, each of DEFENDANT’S employees who have been
14 systematically, intentionally and uniformly subjected to DEFENDANT’S company policy,
15 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
16 to include these additional job titles when they have been identified.

17 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
18 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 21 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
22 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
23 pay for missed meal and rest breaks in violation of the California Labor Code
24 and California regulations and the applicable California Wage Order;
- 25 b. Whether DEFENDANT has engaged in unfair competition by the above-listed
26 conduct;
- 27 c. The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS; and

1 d. Whether DEFENDANT’S conduct was willful.

2 36. DEFENDANT 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 accurately pay
5 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
6 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
7 Lab. Code § 1198;

8 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
9 and the other members of the CALIFORNIA CLASS with all legally required
10 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
11 rest breaks;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 1. Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA LABOR SUB-CLASS, which

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would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting

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- 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. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
 - e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were employed by DEFENDANT in California during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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FIRST CAUSE OF ACTION
UNLAWFUL BUSINESS PRACTICES
(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

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

10 40. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
14 Code § 17021.

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

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

23 43. By the conduct alleged herein, DEFENDANT has engaged and continue to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1198, and 2802 for which this Court
27 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203

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1 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
2 including restitution of wages wrongfully withheld.

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

9 45. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
10 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
11 mandated meal and rest periods and the required amount of compensation for missed meal and
12 rest periods and split shift premiums wages owed, and failed to pay overtime correctly, due to a
13 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
14 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
15 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
16 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

17 46. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
18 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANT.

21 47. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
22 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
24 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

12 51. 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
14 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
15 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
16 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

22 53. PLAINTIFF 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 DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 54. PLAINTIFF 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
28 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.

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

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8 **SECOND CAUSE OF ACTION**

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

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

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

16 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
18 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
19 accurately calculate and pay overtime wages to PLAINTIFF and CALIFORNIA CLASS
20 Members.

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

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

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

1 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they worked, including overtime work. As set forth herein, DEFENDANT'S
4 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
5 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

6 61. DEFENDANT'S uniform pattern of unlawful wage and hour practices
7 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
8 whole, as a result of implementing a uniform policy and practice that denied accurate
9 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS in regards to overtime pay.

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

17 63. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive the correct overtime compensation for their time worked for DEFENDANT.

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

28 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS were paid less for overtime worked
that they were entitled to, constituting a failure to pay all earned wages.

1 66. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time he worked which were in
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194,
4 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
6 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
7 DEFENDANT’S business records and witnessed by employees.

8 67. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for their overtime work, PLAINTIFF and the other members of the CALIFORNIA
11 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
12 which are presently unknown to them and which will be ascertained according to proof at trial.

13 68. DEFENDANT knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
15 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
17 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
19 overtime wages for their overtime worked.

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

28 70. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
CLASS request recovery of overtime compensation, according to proof, interest, statutory costs,
as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
10 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

6 74. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
12 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

18 76. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
19 Members were required to work in excess of four (4) hours without being provided ten (10)
20 minute rest periods. Further, these employees were denied their first rest periods of at least ten
21 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
22 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
23 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
24 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
25 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
26 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
27 periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

28 77. DEFENDANT further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
2 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for
3 each workday that rest period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES WHEN DUE**

10 **(Cal. Lab. Code § 203)**

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

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

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

17 As used in this article:

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

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

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

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

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

4 83. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
5 SUB-CLASS Members’ employment contract.

6 84. Cal. Lab. Code § 203 provides:

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

12 85. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
13 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
14 to these employees who actually worked overtime, as required by law, and has not tendered
15 payment of wages to these employees who missed meal and rest breaks, as required by law.

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

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

24 **(Cal. Lab. Code § 226)**

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

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

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

- a. Gross wages earned;

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

18 89. When DEFENDANT did not accurately record PLAINTIFF’S and other
19 CALIFORNIA CLASS Members’ wages, and missed meal and rest breaks, DEFENDANT
20 violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage
21 statement in writing that properly and accurately itemizes all wages, and missed meal and rest
22 periods and reporting time wages owed to PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages
24 earned by the employees. Additionally, the wage statements DEFENDANT issued to
25 PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a)
26 in that DEFENDANT failed to correctly list the correct name of the legal entity that was the
27 employer of PLAINTIFF and the CALIFORNIA CLASS Members.

28

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

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE PERSONNEL FILES**

14 **(Cal. Lab. Code § 1198.5)**

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

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

20 92. On October 22, 2018 and on March 12, PLAINTIFF Menias Counsel of record,
21 as Plaintiff legal representative, caused a written request via certified mail to be delivered to
22 DEFENDANT for Plaintiff's personnel and employment records, including but not limited to
23 (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4) PLAINTIFF's
24 complete employment file, true and correct copies of which are attached hereto as Exhibit 1.

25 93. DEFENDANT failed to provide and/or make available to PLAINTIFF his
26 personnel records, payroll records, employment contracts, and entire employment files within
27 thirty (30) days of all his requests stated above. In fact, as of the filing of this Complaint,
28 DEFENDANT still has not provided PLAINTIFF his personnel records, pay stubs, and

1 employment file and DEFENDANT has failed to pay PLAINTIFF the statutory penalty in the
2 amount of \$750.00.

3 94. DEFENDANT has violated Cal. Lab. Code Section 1198.5 by failing to respond
4 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
5 former employees) have the right to inspect personnel records maintained by the employer
6 “related to the employee’s performance or to any grievance concerning the employee.”
7 Employers must allow inspection or copying within thirty (30) days of the request . PLAINTIFF
8 requested his employment file via certified mail and DEFEDNANT faled to respond. As a
9 result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with
10 Cal. Lab Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys’ fees and
11 costs for bringing this action.

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§ 2802)**

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

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

20 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

25 97. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
26 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
27 members for required expenses incurred in the discharge of their job duties for DEFENDANT’s
28 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

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

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

17 **NINTH CAUSE OF ACTION**

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

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

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

21 99. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

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

1 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
2 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
3 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
4 subject to arbitration.

5 101. PLAINTIFF and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by DEFENDANT and
9 classified as non-exempt employees in California during the time period of May 17, 2018 until
10 the present (the "AGGRIEVED EMPLOYEES").

11 102. On May 17, 2019, PLAINTIFF gave written notice to the Labor and Workforce
12 Development Agency (the "Agency") and the employer of the specific provisions of this
13 code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #2,
14 attached hereto and incorporated by this reference herein. The statutory waiting period for
15 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
16 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
17 pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 103. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
21 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
22 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements,
23 (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to timely pay wages,
24 all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including
25 but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197,
26 1197.1, 1198, 1998.5, and the applicable Industrial Wage Order(s), and thereby gives rise to
27 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
28 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the

1 representatives 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, PLAINTIFF prays for a judgment against each Defendant, jointly and
6 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 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 12 c. An order requiring DEFENDANT to pay all overtime wages and all sums
13 unlawfully withheld from compensation due to PLAINTIFF and the other
14 members of the 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 DEFENDANT’S violations due to
17 PLAINTIFF 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, Seventh, and Eighth
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
21 action pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for overtime compensation, unreimbursed expenses, and other
24 compensation due to PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
26 CLASS PERIOD plus interest 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 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.
 - e. 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; and
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.
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, and/or § 1194.

DATED: July 22, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani G. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: July 22, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani G. Zakay
Attorney for PLAINTIFF

EXHIBIT 1

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AUTHORIZATION FOR RELEASE OF EMPLOYMENT RECORDS

I, Ezzat menias ("Client"), do hereby authorize All American securtey ("Employer"), to release my entire employment file, including all pay statements, time cards issued to me, arbitration agreements signed by me, background check disclosure and authorization forms signed by me, and all other documents signed by me from the date of my hire, to my attorneys at Blumenthal, Nordrehaug & Bhowmik located at 2255 Calle Clara, La Jolla, California 92037. Thank you.

Respectfully,

~~Ezzat Menias~~ (p 12, 2018)

Client

FACSIMILE
(858) 551-1232

BLUMENTHAL, NORDREHAUG & BHOWMIK

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037
GENERAL E-MAIL: bamlawca@gmail.com
Web Site: www.bamlawca.com

TELEPHONE
(858) 551-1223

WRITERS E-MAIL: Nick@bamlawca.com

WRITERS EXT: 1004

October 22, 2018

CA 1720

VIA CERTIFIED MAIL

All American Security
421 S. Glendora Avenue, Suite 200
West Covina, CA 91790
Certified Mail # 70172620000111325369

Re: **Employee Ezzat Menias – Request for Employment Records**

Dear Human Resource Director:

Please be advised we have been retained by Ezzat Menias to investigate employment law violations. Mr. Menias worked for your company in California. Please direct all future communication regarding this matter to our office.

This letter is written to request copies of all paystubs issued to Mr. Menias during her tenure of employment with you. Additionally, we would like a copy of Mr. Menias' complete employment file, including all documents and arbitration agreements signed by Mr. Menias and all background check disclosure and authorization forms.

Under California Labor Code Section 1198.5, an employer is required to allow an employee to inspect and receive a copy of his or her personnel records which relate to the employee's performance or to any grievance concerning the employee. The failure of an employer to permit an employee to review his or her personnel file is a misdemeanor per Labor Code Section 1199. Labor Code Section 432 also entitles an employee to receive copies of any signed documents related to the obtaining or holding of employment.

Additionally, California Labor Code Section 226(b) requires employers to make payroll records available to employees upon reasonable request. Labor Code Section 226(c) further requires that the employer comply with the request for records as soon as practicable, but no later than thirty (30) calendar days from the date of request. Finally Labor Code Section 226(f) entitles employees to recover civil penalties of \$750.00 against an employer who violates these requirements.

This request is made on behalf of Ezzat Menias in accordance with California Labor Code §§ 226, 1198.5, as well as the applicable Industrial Welfare Commission Wage Order, § 7(c). Please provide the records within thirty (30) days from the date of this correspondence. We would be pleased to pay for any reasonable copy charges.

Respectfully,

/s/ Nicholas De Blouw

Nicholas J. De Blouw, Esq

EXHIBIT 2

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ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #20801

May 17, 2019

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

**ALL AMERICAN PRIVATE SECURITY,
A LIMITED LIABILITY COMPANY**
c/o SAHAR SALAMA
421 S. GLENDORA AVE., STE#200
WEST COVINA CA 91790

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Ezzat Menias (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against All American Private Security, A Limited Liability Company. (“Defendant”). Plaintiff was employed by Defendant in California from March 2017 to September 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including minimum wage and overtime. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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 stylized flourish at the end.

Shani O. Zakay
Attorney for Ezzat Menias

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

5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
Norman B. Blumenthal (State Bar #068687)
6 Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
7 2255 Calle Clara
La Jolla, CA 92037
8 Telephone: (858)551-1223
Facsimile: (858) 551-1232
9 Website: www.bamlawca.com

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

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EZZAT MENIAS, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

ALL AMERICAN PRIVATE SECURITY, A LIMITED LIABILITY COMPANY, a California Limited Liability Company, and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

- 1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
- 2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194, & 1198;
- 3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and
- 7. FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB CODE § 1198.5
- 8. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1

DEMAND FOR A JURY TRIAL

1 Plaintiff Ezzat Menias (“PLAINTIFF”) an individual, on behalf of himself and all other
2 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
5 **THE PARTIES**

6 1. Defendant All American Private Security, A Limited Liability Company.
7 (“DEFENDANT”) is a California limited liability company that at all relevant times mentioned
8 herein conducted and continues to conduct substantial business in the state of California.

9 2. DEFENDANT is a full service provider of premium security services.
10 DEFENDANT also offers security training courses, which are paid for by DEFENDANT’s
11 employees.

12 3. PLAINTIFF was employed by DEFENDANT in California from March of 2017
13 to September of 2018 as a Security Guard and was at all times classified by DEFENDANT as
14 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
15 rest periods.

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

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

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

6 6. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
8 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
9 to Cal. Civ. Proc. Code § 474. PLAINTIFF 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 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
12 the Defendants 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
14 caused the injuries and damages hereinafter alleged.

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

23 THE CONDUCT

24
25 8. DEFENDANT's Security Guard position was a non-exempt position and was in
26 fact classified as non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA
27 CLASS Members employed by DEFENDANT performed manual tasks but were not paid the
28 overtime wages to which they were entitled because of DEFENDANT's systematic policies and

1 practices of failing to correctly record all time worked, including overtime worked.
2 DEFENDANT failed to correctly pay overtime wages to PLAINTIFF and the other
3 CALIFORNIA CLASS Members in accordance with California law, and thereby systematically
4 underpaid overtime compensation to PLAINTIFF and the other CALIFORNIA CLASS
5 Members for their documented time worked, including overtime worked. As a result,
6 PLAINTIFF and the other CALIFORNIA CLASS Members worked more than eight (8) hours
7 in a workday and/or forty (40) hours in a workweek but were not fully compensated for
8 overtime worked as required by law.

9 9. Individuals in these Security Guard positions are and were employees who are
10 entitled to overtime compensation and prompt payment of amounts that the employer owes an
11 employee when the employee quits or is terminated, and other compensation and working
12 conditions that are prescribed by law. Although DEFENDANT required its employees
13 employed as Security Guards to work more than eight (8) hours in a workday and/or forty (40)
14 hours in a workweek from time to time, as a matter of company policy and practice,
15 DEFENDANT denied these employees the correct overtime compensation that the law requires.
16 PLAINTIFF and the CALIFORNIA CLASS Members work or worked in California and
17 DEFENDANT's practices and procedures are and were common throughout California. As a
18 result of their rigorous work schedules.

19 10. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
21 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
22 other CALIFORNIA CLASS Members were required to perform work as ordered by
23 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
24 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members
25 with a second off-duty meal period for some workdays in which these employees were required
26 by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to
27 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal
28 breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of

1 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and
2 in accordance with DEFENDANT's strict corporate policy and practice.

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

14 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT also systematically
15 failed to record and pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount
16 of wages due for split-shift premiums. The applicable Industrial Welfare Commission Wage
17 Orders define a "split-shift" as a "work schedule, which is interrupted by non-paid, non-
18 working, periods established by the employer, other than bona fide rest or meal periods." The
19 Industrial Welfare Commission Wage Orders further provide, "When an employee works a split
20 shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage
21 for that workday, except when the employee resides at the place of employment." DEFENDANT
22 required PLAINTIFF and CALIFORNIA CLASS Members to work split-shifts
23 throughout the CALIFORNIA CLASS PERIOD, but intentionally and unlawfully failed to pay
24 PLAINTIFF and the CALIFORNIA CLASS Members split-shift premium wages and failed to
25 pay PLAINTIFF and CALIFORNIA CLASS Members the correct overtime compensation for
26 hours worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result,
27 PLAINTIFF and the CALIFORNIA CLASS Members were underpaid during their employment
28 with DEFENDANT.

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

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

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

1 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
2 included, but were not limited to, costs related to the use of their personal cellular phones all
3 on behalf of and for the benefit of DEFENDANT.

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

14 17. DEFENDANT also violated Cal. Lab Code Section 1198.5 by failing to respond
15 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
16 former employees) have the right to inspect personnel records maintained by the employer
17 “related to the employee’s performance or to any grievance concerning the employee:”
18 Employers must allow inspection or copying within thirty (30) days of the request.
19 PLAINTIFF requested his employment file via certified mail multiple times and DEFENDANT
20 failed to respond each time. As a result, PLAINTIFF is now entitled to statutory penalty of \$750
21 and an award of attorneys’ fees and costs for bringing this action.

22 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
24 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
25 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
26 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
27 from being relieved of all of his duties for the legally required off-duty meal periods. As a
28 result, DEFENDANT’s failure to provide PLAINTIFF with the legally required meal periods

1 is evidenced by DEFENDANT’s business records. To date, DEFENDANT has yet to pay
2 PLAINTIFF all of his overtime wages due to him and DEFENDANT has failed to pay any
3 penalty wages owed to him under California Labor Code Section 203. The amount in
4 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

5 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT systematically failed
6 to record a pay PLAINTIFF and CALIFORNIA CLASS Members wage due for split-shift
7 premiums. The applicable Industrial Welfare Commission Wage Orders define a “split-shift”
8 as a “work schedule, which is interrupted by non-paid, non-working, periods established by the
9 employer, other than bona fide rest or meal periods.” The Industrial Welfare Commission Wage
10 Orders further provide, “When an employee works a split shift, one (1) hour’s pay at the
11 minimum wage shall be paid in addition to the minimum wage for that workday, except when
12 the employee resides at the place of employment.” DEFENDANT required PLAINTIFF and
13 CALIFORNIA CLASS Members to work split-shifts throughout the CALIFORNIA CLASS
14 PERIOD, but intentionally and unlawfully failed to pay the PLAINTIFF and the CALIFORNIA
15 CLASS Members split-shift premium wages.

16
17 **JURISDICTION AND VENUE**

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

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

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THE CALIFORNIA CLASS

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2 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
5 all individuals who are or previously were employed by DEFENDANT in California as Security
6 Guards and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
7 during the period beginning four (4) years prior to the filing of this Complaint and ending on
8 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
9 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
10 dollars (\$5,000,000.00).

11 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

14 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
18 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even
19 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
20 work and permits or suffers to permit this work.

21 25. DEFENDANT has the legal burden to establish that each and every
22 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
23 required by California laws. The DEFENDANT, however, as a matter of uniform and
24 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
25 PERIOD and still fails to have in place a policy or practice to ensure that each and every
26 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
27 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
28 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§

1 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

2 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
3 CLASS Members is impracticable.

4 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
5 California law by:

6 (a) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 unlawfully, unfairly and deceptively having in place company policies,
9 practices and procedures that uniformly denied PLAINTIFF and the
10 members of the CALIFORNIA CLASS the correct overtime wages and
11 split shift premiums and otherwise violated applicable law; and,

12 (b) Committing an act of unfair competition in violation of the UCL, by
13 failing to provide the PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with the legally required meal and rest periods.

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

17 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
18 that the joinder of all such persons is impracticable and the disposition of
19 their claims as a class will benefit the parties and the Court;

20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
21 that are raised in this Complaint are common to the CALIFORNIA
22 CLASS will apply uniformly to every member of the CALIFORNIA
23 CLASS;

24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA CLASS, was a Security Guard and
27 was classified as a non-exempt employee paid on an hourly basis who was
28 subjected to the DEFENDANT’s deceptive practice and policy which

1 failed to provide the legally required meal and rest periods to the
2 CALIFORNIA CLASS and thereby systematically underpaid
3 compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF
4 sustained economic injury as a result of DEFENDANT's employment
5 practices. PLAINTIFF and the members of the CALIFORNIA CLASS
6 were and are similarly or identically harmed by the same unlawful,
7 deceptive, unfair and pervasive pattern of misconduct engaged in by
8 DEFENDANT; and,

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

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

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

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

27 2) Adjudication with respect to individual members of the
28 CALIFORNIA CLASS which would as a practical matter be

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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 to members of the CALIFORNIA CLASS as required by law;

1) 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 PLAINTIFF seeks declaratory relief holding that the DEFENDANT’s 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:

1) 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 CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual

1 prosecution of this litigation;

2 2) Class certification will obviate the need for unduly duplicative
3 litigation that would create the risk of:

4 A. Inconsistent or varying adjudications with respect to
5 individual members of the CALIFORNIA CLASS, which
6 would establish incompatible standards of conduct for the
7 DEFENDANT; and/or,

8 B. Adjudications with respect to individual members of the
9 CALIFORNIA CLASS would as a practical matter be
10 dispositive of the interests of the other members not parties
11 to the adjudication or substantially impair or impede their
12 ability to protect their interests;

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

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

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

26 (a) The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual CALIFORNIA
28 CLASS Members because the DEFENDANT's employment practices are

1 uniform and systematically applied with respect to the CALIFORNIA
2 CLASS;

3 (b) A Class Action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the members of the CALIFORNIA
5 CLASS because in the context of employment litigation a substantial
6 number of individual CALIFORNIA CLASS Members will avoid
7 asserting their rights individually out of fear of retaliation or adverse
8 impact on their employment;

9 (c) The members of the CALIFORNIA CLASS are so numerous that it is
10 impractical to bring all members of the CALIFORNIA CLASS before the
11 Court;

12 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
13 able to obtain effective and economic legal redress unless the action is
14 maintained as a Class Action;

15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the acts of unfair competition, statutory violations and
17 other improprieties, and in obtaining adequate compensation for the
18 damages and injuries which DEFENDANT's actions have inflicted upon
19 the CALIFORNIA CLASS;

20 (f) There is a community of interest in ensuring that the combined assets of
21 DEFENDANT are sufficient to adequately compensate the members of
22 the CALIFORNIA CLASS for the injuries sustained;

23 (g) DEFENDANT has acted or refused to act on grounds generally applicable
24 to the CALIFORNIA CLASS, thereby making final class-wide relief
25 appropriate with respect to the CALIFORNIA CLASS as a whole;

26 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
27 the business records of DEFENDANT; and,

28 (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT as to the
3 members of the CALIFORNIA CLASS.

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

9
10 **THE CALIFORNIA LABOR SUB-CLASS**

11 32. PLAINTIFF further brings the Second, Third, Fourth, Sixth, Seventh and Eighth
12 Causes of Action on behalf of a California sub-class, defined as all members of the
13 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
14 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
15 to the filing of the complaint and ending on the date as determined by the Court (the
16 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
17 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
18 Members is under five million dollars (\$5,000,000.00).

19 33. DEFENDANT, as a matter of company policy, practice and procedure, and in
20 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
21 requirements, and the applicable provisions of California law, intentionally, knowingly, and
22 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
23 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
24 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
25 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
26 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
27 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
28 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling

1 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
2 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

3 34. DEFENDANT maintains records from which the Court can ascertain and identify
4 by name and job title, each of DEFENDANT's employees who have been systematically,
5 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
6 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
7 any additional job titles of similarly situated employees when they have been identified.

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

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

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 overtime compensation due to members of the CALIFORNIA LABOR
14 SUB-CLASS and pay for missed meal and rest breaks in violation of the
15 California Labor Code and California regulations and the applicable
16 California Wage Order;
- 17 (b) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
- 19 (c) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
- 21 (d) Whether DEFENDANT's conduct was willful.

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

- 24 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
25 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
26 CLASS the correct overtime wage pay for which DEFENDANT is liable
27 pursuant to Cal. Lab. Code § 1198;
- 28 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide

1 PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
3 and the legally required off-duty rest breaks; and,

- 4 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
5 when an employee is discharged or quits from employment, the employer
6 must pay the employee all wages due without abatement, by failing to
7 tender full payment and/or restitution of wages owed or in the manner
8 required by California law to the members of the CALIFORNIA LABOR
9 SUB-CLASS who have terminated their employment.

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

- 12 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
13 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
14 Members is impracticable and the disposition of their claims as a class
15 will benefit the parties and the Court;
- 16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 LABOR SUB-CLASS and will apply uniformly to every member of the
19 CALIFORNIA LABOR SUB-CLASS;
- 20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
22 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
23 was a non-exempt employee paid on an hourly basis who was subjected
24 to the DEFENDANT's practice and policy which failed to pay the correct
25 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
26 PLAINTIFF sustained economic injury as a result of DEFENDANT's
27 employment practices. PLAINTIFF and the members of the
28 CALIFORNIA LABOR SUB-CLASS were and are similarly or

1 identically harmed by the same unlawful, deceptive, unfair and pervasive
2 pattern of misconduct engaged in by DEFENDANT; and,

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

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

13 (a) Without class certification and determination of declaratory, injunctive,
14 statutory and other legal questions within the class format, prosecution of
15 separate actions by individual members of the CALIFORNIA LABOR
16 SUB-CLASS will create the risk of:

17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA LABOR SUB-CLASS which
19 would establish incompatible standards of conduct for the parties
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
27 or refused to act on grounds generally applicable to the CALIFORNIA
28 LABOR SUB-CLASS, making appropriate class-wide relief with respect

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
2 DEFENDANT uniformly fails to pay all wages due. Including the correct
3 wages for all time worked by the members of the CALIFORNIA LABOR
4 SUB-CLASS as required by law;

5 (c) Common questions of law and fact predominate as to the members of the
6 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
7 violations of California Law as listed above, and predominate over any
8 question affecting only individual CALIFORNIA LABOR SUB-CLASS
9 Members, and a Class Action is superior to other available methods for
10 the fair and efficient adjudication of the controversy, including
11 consideration of:

12 1) The interests of the members of the CALIFORNIA LABOR SUB-
13 CLASS in individually controlling the prosecution or defense of
14 separate actions in that the substantial expense of individual
15 actions will be avoided to recover the relatively small amount of
16 economic losses sustained by the individual CALIFORNIA
17 LABOR SUB-CLASS Members when compared to the substantial
18 expense and burden of individual prosecution of this litigation;

19 2) Class certification will obviate the need for unduly duplicative
20 litigation that would create the risk of:

21 A. Inconsistent or varying adjudications with respect to
22 individual members of the CALIFORNIA LABOR SUB-
23 CLASS, which would establish incompatible standards of
24 conduct for the DEFENDANT; and/or,

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members
28 not parties to the adjudication or substantially impair or

1 impede their ability to protect their interests;

2 3) In the context of wage litigation because a substantial number of
3 individual CALIFORNIA LABOR SUB-CLASS Members will
4 avoid asserting their legal rights out of fear of retaliation by
5 DEFENDANT, which may adversely affect an individual's job
6 with DEFENDANT or with a subsequent employer, the Class
7 Action is the only means to assert their claims through a
8 representative; and,

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

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

- 16 (a) The questions of law and fact common to the CALIFORNIA LABOR
17 SUB-CLASS predominate over any question affecting only individual
18 CALIFORNIA LABOR SUB-CLASS Members;
- 19 (b) A Class Action is superior to any other available method for the fair and
20 efficient adjudication of the claims of the members of the CALIFORNIA
21 LABOR SUB-CLASS because in the context of employment litigation a
22 substantial number of individual CALIFORNIA LABOR SUB-CLASS
23 Members will avoid asserting their rights individually out of fear of
24 retaliation or adverse impact on their employment;
- 25 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
26 numerous that it is impractical to bring all members of the CALIFORNIA
27 LABOR SUB-CLASS before the Court;
- 28 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS

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Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 226.7, 510, 512, 558, 1194 & 1198, for which this
23 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
24 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
25 competition, including restitution of wages wrongfully withheld.

26 45. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
27 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
28 unscrupulous or substantially injurious to employees, and were without valid justification or

1 utility for which this Court should issue equitable and injunctive relief pursuant to Section
2 17203 of the California Business & Professions Code, including restitution of wages wrongfully
3 withheld.

4 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
5 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
6 mandated meal and rest periods and the required amount of compensation for missed meal and
7 rest periods and split shift premiums wages owed, and failed to pay overtime correctly, due to
8 a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab.
9 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
10 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
11 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

16 48. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
17 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
18 to provide all legally required meal breaks to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

25 50. PLAINTIFF further demands on behalf of himself and each member of the
26 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
27 period was timely provided as required by law.

28 51. By and through the unlawful and unfair business practices described herein,

1 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
2 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
3 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
4 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
5 to unfairly compete against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, 1194, and 1198]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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

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

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

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

61. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked, including overtime work. As set forth herein, DEFENDANT’s uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

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1 62. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
3 result of implementing a uniform policy and practice that denied accurate compensation to the
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
5 overtime pay.

6 63. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculates the correct time worked and consequently underpaid the actual overtime
8 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
9 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission
11 requirements and other applicable laws and regulations.

12 64. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
14 receive the correct overtime compensation for their time worked for DEFENDANT.

15 65. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
16 from the overtime requirements of the law. None of these exemptions are applicable to
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
19 to a valid collective bargaining agreement that would preclude the causes of action contained
20 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the
21 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT’s violations of non-negotiable,
22 non-waiveable rights provided by the State of California.

23 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for overtime worked
25 that they were entitled to, constituting a failure to pay all earned wages.

26 67. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which were in
28 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194,

1 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
3 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
4 DEFENDANT's business records and witnessed by employees.

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

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

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

26 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
28 interest, statutory costs, as well as the assessment of any statutory penalties against

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

10
11 **THIRD CAUSE OF ACTION**

12 **For Failure to Provide Required Meal Periods**

13 **[Cal. Lab. Code §§ 226.7 & 512]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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

18 73. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the
19 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-
20 CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work
21 performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent
22 these employees from being relieved of all of their duties for the legally required off-duty meal periods.
23 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-
24 CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal
25 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR
26 SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is
27 evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
28 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which

1 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
2 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy
4 and practice.

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

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

13
14 **FOURTH CAUSE OF ACTION**

15 **For Failure to Provide Required Rest Periods**

16 **[Cal. Lab. Code §§ 226.7 & 512]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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

21 77. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
22 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
23 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for
24 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
26 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
27 other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in
28 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA

1 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
2 and DEFENDANT’s managers.

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

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

11
12 **FIFTH CAUSE OF ACTION**

13 **For Failure to Pay Wages When Due**

14 **[Cal. Lab. Code §§ 201, 202, 203]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

20 81. Cal. Lab. Code § 200 provides that:

21 As used in this article:

22 (a) "Wages" includes all amounts for labor performed by employees of every
23 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

24 (b) "Labor" includes labor, work, or service whether rendered or performed under
25 contract, subcontract, partnership, station plan, or other agreement if the labor to
be paid for is performed personally by the person demanding payment.

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

1 83. Cal. Lab. Code § 202 provides, in relevant part, that:

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

11 84. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
12 CLASS Members’ employment contract.

13 85. Cal. Lab. Code § 203 provides:

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

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

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

28 **SIXTH CAUSE OF ACTION**

**For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

88. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-

1 CLASS reallege and incorporate by this reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

3 89. Cal. Labor Code § 226 provides that an employer must furnish employees
4 with
5 an “accurate itemized” statement in writing showing:

- 6 a. Gross wages earned,
- 7 b. (2) total hours worked by the employee, except for an employee whose
8 compensation is solely based on a salary and who is exempt from payment of
9 overtime under subdivision (a) of Section 515 or any applicable order fo the
10 Industrial Welfare Commission,
- 11 c. the number of piecerate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis,
- 13 d. all deductions, provided that all deductions made on written orders of
14 employment may be aggregated and shown as one item,
- 15 e. net wages earned,
- 16 f. the inclusive dates of the period for which the employee is paid,
- 17 g. the name of the employee and his or her social security number, except that by
18 January 1, 2018, only the last four digits of his or her social security number of
19 an employee identification number other than social security number may be
20 shown on the itemized statement,
- 21 h. the name and address of the legal entity that is the employer, and
- 22 i. all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee.

24 90. When DEFENDANT did not accurately record PLAINTIFF’s and other
25 CALIFORNIA CLASS Members’ missed meal and rest breaks, DEFENDANT violated Cal.
26 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
27 that properly and accurately itemizes all missed meal and rest period and reporting time wages
28 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and

1 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
2 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
3 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
4 the correct name of the legal entity that was the employer of PLAINTIFF and the
5 CALIFORNIA CLASS Members.

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

17
18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Provide Personnel Files**

20 **[Cal. Lab. Code § 1198.5]**

21 **(By PLAINTIFF and Against All Defendants)**

22
23 92. On October 22, 2018 and on March 12, PLAINTIFF Menias Counsel of record,
24 as Plaintiff legal representative, caused a written request via certified mail to be delivered to
25 DEFENDANT for Plaintiff's personnel and employment records, including but not limited to
26 (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4) PLAINTIFF's
27 complete employment file, true and correct copies of which are attached hereto as Exhibit 1.
28

1 93. DEFENDANT failed to provide and/or make available to PLAINTIFF his
2 personnel records, payroll records, employment contracts, and entire employment files within
3 thirty (30) days of all his requests stated above. In fact, as of the filing of this Complaint,
4 DEFENDANT still has not provided PLAINTIFF his personnel records, pay stubs, and
5 employment file and DEFENDANT has failed to pay PLAINTIFF the statutory penalty in the
6 amount of \$750.00.

7 94. DEFENDANT has violated Cal. Lab. Code Section 1198.5 by failing to respond
8 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
9 former employees) have the right to inspect personnel records maintained by the employer
10 “related to the employee’s performance or to any grievance concerning the employee.”
11 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
12 requested his employment file via certified mail and DEFENDANT failed to respond. As a
13 result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with
14 Cal. Lab Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys’ fees and
15 costs for bringing this action.

16
17 **EIGHTH CAUSE OF ACTION**

18 **For Failure To Pay Minimum Wages**
19 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

20
21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
22 **and Against All Defendants)**

23
24 95. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.
27
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1 96. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to
4 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
5 Members.

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

9 98. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage than
11 the minimum so fixed in unlawful.

12 99. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
13 including minimum wage compensation and interest thereon, together with the costs of suit.
14

15 100. DEFENDANT maintained a uniform wage practice of paying the PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
17 correct amount of time they worked, including time spent engaging in work tasks while off the
18 clock. As set forth herein, DEFENDANT’s uniform policy and practice was to unlawfully and
19 intentionally deny timely payment of wages due to the PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS.

21 101. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
22 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
23 result of implementing a uniform policy and practice that denied accurate compensation to the
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
25 minimum wage pay.

26 102. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately calculates the correct time worked and consequently underpaid the actual time
28

1 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

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

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

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

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

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

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

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
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- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF 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 DEFENDANT's violations due to PLAINTIFF 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, Seventh and Eighth 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, due 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) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order.
- E) 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 each member of

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the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollar (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

F) Penalties pursuant to Cal. Lab. Code § 1198.5

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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5 and/or §1194.

Dated: May 17, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: May 16, 2019

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal

Attorneys for Plaintiff

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