

**SUMMONS
(CITACION JUDICIAL)**

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

ANNING-JOHNSON COMPANY, a Delaware Corporation; and DOES
1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ARTHUR GUTIERREZ, on behalf of himself and on behalf of all
persons similarly situated,

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

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 15 2021

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER
(Número de Caso): **21ST CV22570**

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Ave., Suite C204 San Diego, CA 92110

DATE: **JUN 15 2021**
(Fecha)

SHERRI R. CARTER

Clerk, by
(Secretario)

Kristina Vargas

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)).

NOTICE TO THE PERSON SERVED: You are served

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

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

- other (specify):
- 4. by personal delivery on (date):

[SEAL]

VIA FAX

1 **JCL LAW FIRM, APC**

2 Jean-Claude Lapuyade (State Bar #248676)
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5 Telephone: (619)599-8292
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8 Attorneys for Plaintiff

9 [Counsel Continued on Next Page]

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Superior Court of California
County of Los Angeles

JUN 15 2021

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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

11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 ARTHUR GUTIERREZ, on behalf of
13 himself and on behalf of all persons similarly
14 situated,

15 Plaintiffs,

16 v.

17 ANNING-JOHNSON COMPANY, a
18 Delaware Corporation; and DOES 1-50,
19 Inclusive,

20 DEFENDANTS.

Case No: **21STCV22570**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

VIA FAX

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)

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Attorneys for Plaintiff

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant ANNING-JOHNSON COMPANY (“DEFENDANTS” or
6 “DEFENDANTS”) is Corporation and at all relevant times mentioned herein conducted and
7 continues to conduct substantial and regular business throughout California.

8 2. DEFENDANTS operate a construction business which provides services such as
9 metal decking, wall and ceiling systems, fireproofing, and roofing services to their clients
10 throughout California, including the Los Angeles, California location where PLAINTIFF
11 worked.

12 3. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from 2011 to
14 January of 2021.

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

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

1 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
2 DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the
3 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and
4 current unlawful conduct, 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
7 presently unknown to PLAINTIFF who therefore sue these DEFENDANTS by such fictitious
8 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
9 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they
10 are ascertained. PLAINTIFF is informed and believe, and based upon that information and
11 belief allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
12 inclusive, are responsible in some manner for one or more of the events and happenings that
13 proximately caused the injuries and damages hereinafter alleged.

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

22 **THE CONDUCT**

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

1 PLAINTIFF performed work before and after the beginning of his shift, spending time under
2 DEFENDANTS' control for which he was not compensated. For example, DEFENDANTS
3 from time to time required PLAINTIFF and other CALIFORNIA CLASS Members to submit to
4 Covid-19 screenings before they clocked in for their scheduled shifts. In order to ensure they
5 clocked in at their scheduled times, PLAINTIFF and other CALIFORNIA CLASS Members
6 were from time to time required by DEFENDANTS to show up for work between five to thirty
7 minutes early in order to submit to Covid-19 screenings. As a result, the PLAINTIFF and other
8 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
9 regularly working without their time being accurately recorded and without compensation at the
10 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice
11 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
12 evidenced by DEFENDANTS' business records.

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

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

1 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
2 “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of
3 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
4 DEFENDANTS.

5 11. As a result of their rigorous work schedules, PLAINTIFF and other
6 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
7 breaks and were not fully relieved of duty for meal periods. Specifically, PLAINTIFF and
8 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal
9 breaks to complete tasks for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
10 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
12 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
13 each workday in which these employees were required by DEFENDANTS to work ten (10)
14 hours of work. DEFENDANTS’ policy caused PLAINTIFF and other CALIFORNIA CLASS
15 Members to remain on-call and on-duty during what was supposed to be their off-duty meal
16 periods. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
17 breaks without additional compensation and in accordance with DEFENDANTS’ strict
18 corporate policy and practice.

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

1 Members were required to remain on the premises, on-duty and on-call, and subject to
2 DEFENDANTS' control in accordance with DEFENDANTS' policy. PLAINTIFF and other
3 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
4 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
5 remain on-call and on-duty during what was supposed to be their off-duty rest periods. As a
6 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members
7 were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
8 managers.

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

21 14. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
25 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
26 the payment of the correct compensation as required by California law which allowed
27 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
28 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA

1 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
2 accordingly.

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

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

20 17. Aside from the violations listed herein, DEFENDANTS failed to issue to
21 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
22 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
23 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
24 other members of the CALIFORNIA CLASS. Further, DEFENDANTS from time to time failed
25 to issue an itemized wage statement to PLAINTIFF and other members of the CALIFORNIA
26 CLASS that included the number hours worked and the applicable hourly rate. As a result, from
27 time to time DEFENDANTS provided PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

12 19. In the course of their employment, PLAINTIFF and other CALIFORNIA
13 CLASS Members as a business expense, were required by DEFENDANTS to use their own
14 personal cellular phones and personal vehicles as a result of and in furtherance of their job
15 duties as employees for DEFENDANTS but were not reimbursed or indemnified by
16 DEFENDANTS for the cost associated with the use of their personal cellular phones and
17 personal vehicles for DEFENDANTS' benefit. Specifically, PLAINTIFFS and other
18 CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell
19 phones and personal vehicles for work related issues. As a result, in the course of their
20 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
21 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
22 related to the use of their personal cellular phones and personal vehicles all on behalf of and for
23 the benefit of DEFENDANTS.

24 20. By reason of this uniform conduct applicable to PLAINTIFF and all
25 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
26 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
27 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
28 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other

1 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
2 rates is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of
3 the obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all
4 required overtime compensation for work performed by the members of the CALIFORNIA
5 CLASS and violated the California Labor Code and regulations promulgated thereunder as
6 herein alleged.

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

24 JURISDICTION AND VENUE

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

1 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
2 PERIOD and still fails to have in place a policy or practice to ensure that each and every
3 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
4 common business practice applicable to each and every CALIFORNIA CLASS Member can be
5 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
6 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
7 elements of this claim.

8 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 29. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
11 under California law by:

- 12 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
14 company policies, practices and procedures that failed to pay all wages due the
15 CALIFORNIA CLASS for all time worked;
- 16 b. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
18 provide mandatory meal and/or rest breaks to PLAINTIFF and the
19 CALIFORNIA CLASS members;
- 20 c. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
22 Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA
23 CLASS members with necessary expenses incurred in the discharge of their job
24 duties; and
- 25 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
26 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
27 company policies, practices and procedures that uniformly and systematically
28 failed to record and pay PLAINTIFF and other members of the CALIFORNIA

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CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANTS' deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANTS and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS' practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically under pays overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFF seek declaratory relief holding

1 that the DEFENDANTS' policy and practices constitute unfair
2 competition, along with declaratory relief, injunctive relief, and incidental
3 equitable relief as may be necessary to prevent and remedy the conduct
4 declared to constitute unfair competition;

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

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

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

20 1. Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA CLASS, which would establish
22 incompatible standards of conduct for the DEFENDANTS;
23 and/or;

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

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

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

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

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

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

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

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

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- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; 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 DEFENDANTS as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

34. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the original complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR

1 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
2 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
3 dollars (\$5,000,000.00).

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

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

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

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

- 26 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
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missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS' conduct was willful.

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

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

1 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
2 Cal. Lab. Code §§ 1194 and 1197;

3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
4 and the other members of the CALIFORNIA CLASS with all legally required
5 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
6 rest breaks;

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

12 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA CLASS members with necessary expenses incurred in the
14 discharge of their job duties;

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

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

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

27 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
28 raised in this Complaint are common to the CALIFORNIA LABOR SUB-

1 CLASS and will apply uniformly to every member of the CALIFORNIA
2 LABOR SUB-CLASS;

3 c. The claims of the representative PLAINTIFF are typical of the claims of each
4 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
5 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
6 employee paid on an hourly basis and paid additional non-discretionary incentive
7 wages who was subjected to the DEFENDANTS' practice and policy which
8 failed to pay the correct rate of overtime wages and total amount of wages due to
9 the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic
10 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
12 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
13 of misconduct engaged in by DEFENDANTS; and

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

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

24 a. Without class certification and determination of declaratory, injunctive, statutory
25 and other legal questions within the class format, prosecution of separate actions
26 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
27 the risk of:
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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

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- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. 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 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

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

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

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

1 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
3 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

25 51. 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 52. 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 53. By and through the unlawful and unfair business practices described herein,
7 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
9 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
10 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly
11 compete against competitors who comply with the law.

12 54. 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 55. 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 DEFENDANTS have 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.

22 56. 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 DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 57. 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 DEFENDANTS are restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

3 64. DEFENDANTS' uniform pattern of unlawful wage and hour practices
4 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
5 whole, as a result of implementing a uniform policy and practice that denies accurate
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS in regards to minimum wage pay.

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

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

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

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

26 69. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 correct minimum wages for their time worked.

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

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

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1 amount of overtime worked and correct applicable overtime rate for the amount of overtime
2 they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to
3 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
5 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for
6 all overtime worked.

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

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

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

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

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

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

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

19 85. DEFENDANTS knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
21 worked. DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to
24 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
25 applicable overtime rate.

26 86. 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
28 all time worked and provide them with the requisite overtime compensation, DEFENDANTS

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

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

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

25 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
26 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
27 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
28 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

26 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
27 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
28 Further, these employees were denied their first rest periods of at least ten (10) minutes for some

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

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

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

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

24 96. 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 97. Cal. Labor Code § 226 provides that an employer must furnish employees with
28 an "accurate itemized" statement in writing showing:

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

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

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

99. When DEFENDANTS did not accurately record PLAINTIFF’S and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS

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

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

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1 assert any waiver of this expectation. Although these expenses were necessary expenses
2 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
3 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
4 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
5 laws and regulations of California.

6 104. PLAINTIFF therefore demands reimbursement for expenditures or losses
7 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
8 their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS,
9 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES WHEN DUE**

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

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

15 105. 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.

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

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20 As used in this article:(a) "Wages" includes all amounts for labor performed by
21 employees of every description, whether the amount is fixed or ascertained by the
22 standard of time, task, piece, Commission basis, or other method of calculation.

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

26 107. 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."

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

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

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

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

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

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

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

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

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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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,

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

- 3. On all claims:
 - a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

DATED: June 11, 2021

JCL LAW FIRM, APC


By: 
Jean-Claude Lapuyade
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

DATED: June 11, 2021

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for Plaintiff