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Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

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

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

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

Judge Peter Wilson

MARCOS ANTONIOS, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

INTERFACE REHAB, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendant.

Case No: 30-2019-01067547-CU-OE-CXC

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

DEMAND FOR A JURY TRIAL

CX-102

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

5 **THE PARTIES**

6 1. Defendant Interface Rehab, Inc. (“DEFENDANT”) is a corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business in the state of California.

9 2. DEFENDANT operates a short-term rehabilitation facility which caters to
10 patients and their physical, occupational and speech therapy needs. DEFENDANT operates this
11 rehabilitation facility in various locations, including Placentia, California.

12 3. PLAINTIFF was employed by DEFENDANT in California from May of 2015 to
13 July 2018 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods.

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

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

1 economically injured by DEFENDANT's past and current unlawful conduct, and all other
2 appropriate legal and equitable relief.

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

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

20 **THE CONDUCT**

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

1 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
2 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
3 accordance with DEFENDANT's strict corporate policy and practice.

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

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

26 11. In the course of their employment, PLAINTIFF and other CALIFORNIA
27 CLASS Members as a business expense, were required by DEFENDANT to use their own
28 personal cellular phones as a result of and in furtherance of their job duties as employees for

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

9 12. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
10 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with complete and accurate wage statements which
12 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
13 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
14 an accurate itemized wage statement in writing showing, among other things, gross wages
15 earned and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
17 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
18 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
19 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
20 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
21 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
22 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
23 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

24 13. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
28 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to

1 purposefully avoid the payment for all time worked as required by California law which allows
2 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
3 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 14. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
7 CLASS Members to engage in additional work, this sometimes resulted in a second reporting
8 for work in a single workday. In such a circumstance of a second reporting for work in a single
9 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
10 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for
11 work a second time in any one workday and is furnished less than two (2) hours of work on the
12 second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of
13 pay, which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd.
14 5(B).

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

26 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
28 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty

1 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
2 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
3 from being relieved of all of his duties for the legally required off-duty meal periods. As a
4 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is
5 evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately
6 recording all missed meal and rest periods and/or reporting time wages due, the wage statements
7 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
8 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his overtime wages
9 due to him and DEFENDANT has failed to pay any penalty wages owed to him under
10 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
11 does not exceed the sum or value of \$75,000.

12 **JURISDICTION AND VENUE**

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

17 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
18 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
19 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
20 in this County and/or conducts substantial business in this County, and (ii) committed the
21 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

22 **THE CALIFORNIA CLASS**

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

5 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

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

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

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

26 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
27 California law by:
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- 1 a. 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 b. Violating the UCL by unlawfully, unfairly and/or deceptively having in place
- 5 company policies, practices and procedures that failed to pay all reporting time
- 6 wages due to PLAINTIFF and the CALIFORNIA CLASS.

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

- 9 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 10 joinder of all such persons is impracticable and the disposition of their claims as
- 11 a class will benefit the parties and the Court;
- 12 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 13 raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 14 uniformly to every member of the CALIFORNIA CLASS;
- 15 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 16 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
- 17 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
- 18 an hourly basis who was subjected to the DEFENDANT’s deceptive practice and
- 19 policy which failed to provide the legally required meal and rest periods to the
- 20 CALIFORNIA CLASS and thereby systematically underpaid compensation to
- 21 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
- 22 as a result of DEFENDANT’s employment practices. PLAINTIFF and the
- 23 members of the CALIFORNIA CLASS were and are similarly or identically
- 24 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
- 25 misconduct engaged in by DEFENDANT; and
- 26 d. The representative PLAINTIFF will fairly and adequately represent and protect
- 27 the interest of the CALIFORNIA CLASS, and have retained counsel who are
- 28 competent and experienced in Class Action litigation. There are no material

1 conflicts between the claims of the representative PLAINTIFF and the members
2 of the CALIFORNIA CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

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

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

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

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

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

23 i. With respect to the First Cause of Action, the final relief on behalf of the
24 CALIFORNIA CLASS sought does not relate exclusively to restitution
25 because through this claim PLAINTIFF seeks declaratory relief holding
26 that the DEFENDANT's policy and practices constitute unfair
27 competition, along with declaratory relief, injunctive relief, and incidental
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equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may

1 adversely affect an individual’s job with DEFENDANT or with a
2 subsequent employer, the Class Action is the only means to assert their
3 claims through a representative; and

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

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

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

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

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

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

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

3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANT are sufficient to adequately compensate the members of the
5 CALIFORNIA CLASS for the injuries sustained;

6 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
7 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
8 respect to the CALIFORNIA CLASS as a whole;

9 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
10 business records of DEFENDANT; and

11 i. Class treatment provides manageable judicial treatment calculated to bring an
12 efficient and rapid conclusion to all litigation of all wage and hour related claims
13 arising out of the conduct of DEFENDANT as to the members of the
14 CALIFORNIA CLASS.

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

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21 **THE CALIFORNIA LABOR SUB-CLASS**

22 29. PLAINTIFF further brings the Second, Third, Fourth and Fifth causes of Action
23 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
24 were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) at
25 any time during the period three (3) years prior to the filing of the complaint and ending on the
26 date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)
27 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim
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1 of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
2 (\$5,000,000.00).

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

16 31. DEFENDANT maintains records from which the Court can ascertain and
17 identify by name and job title, each of DEFENDANT’s 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 these additional job titles when they have been identified.

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

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

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

- 1 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
- 2 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 5 conduct;
- 6 d. The proper measure of damages and penalties owed to the members of the
- 7 CALIFORNIA LABOR SUB-CLASS; and
- 8 e. Whether DEFENDANT's conduct was willful.

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

- 11 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 13 statement in writing showing the corresponding correct amount of wages earned
- 14 by the employee;
- 15 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 16 and the other members of the CALIFORNIA CLASS with all legally required
- 17 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 18 rest breaks;
- 19 c. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 20 employee is discharged or quits from employment, the employer must pay the
- 21 employee all wages due without abatement, by failing to tender full payment
- 22 and/or restitution of wages owed or in the manner required by California law to
- 23 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 24 their employment.

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

- 27 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
- 28 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members

1 is impracticable and the disposition of their claims as a class will benefit the
2 parties and the Court;

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

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

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

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

27 a. Without class certification and determination of declaratory, injunctive, statutory
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

3 i. Inconsistent or varying adjudications with respect to individual members
4 of the CALIFORNIA LABOR SUB-CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

24 i. The interests of the members of the CALIFORNIA LABOR SUB-
25 CLASS in individually controlling the prosecution or defense of separate
26 actions in that the substantial expense of individual actions will be
27 avoided to recover the relatively small amount of economic losses
28 sustained by the individual CALIFORNIA LABOR SUB-CLASS

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Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter 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.

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

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- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. 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

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
2 employed by DEFENDANT in California during the CALIFORNIA LABOR
3 SUB-CLASS PERIOD; and

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

8
9 **FIRST CAUSE OF ACTION**

10 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

22 Any person who engages, has engaged, or proposes to engage in unfair competition may
23 be enjoined in any court of competent jurisdiction. The court may make such orders or
24 judgments, including the appointment of a receiver, as may be necessary to prevent the
25 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).

26 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 226.7, 512, 558, 1194, 1197 and 1198, for which this Court should issue
2 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
3 necessary to prevent and remedy the conduct held to constitute unfair competition, including
4 restitution of wages wrongfully withheld.

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

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

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

23 45. By the conduct alleged herein, DEFENDANT's practices were also unfair and
24 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
25 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
26 members as required by Cal. Lab. Code §§ 226.7 and 512.

27 46. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

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

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

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

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

6
7 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

27 58. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
amount of time they work. As set forth herein, DEFENDANT’s uniform policy and practice

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 59. DEFENDANT’S 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 60. In committing these violations of the California Labor Code, DEFENDANT
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 DEFENDANT 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 61. As a direct result of DEFENDANT’S 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 DEFENDANT.

17 62. 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 63. By virtue of DEFENDANT’S 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 64. DEFENDANT 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. DEFENDANT systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22 **THIRD CAUSE OF ACTION**

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

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

27 67. 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.

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

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

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

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

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

71. 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.

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

9 76. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

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8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

10 **(Cal. Lab. Code § 226)**

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

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

- 18 a. Gross wages earned,
19 b. (2) total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment
21 of overtime under subdivision (a) of Section 515 or any applicable order
22 of the Industrial Welfare Commission,
23 c. the number of piecerate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis,
25 d. all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item,
27 e. net wages earned,
28 f. the inclusive dates of the period for which the employee is paid,

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

8 81. When DEFENDANT did not accurately record PLAINTIFF's and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
10 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
11 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
12 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
13 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
14 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
15 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
16 the correct name of the legal entity that was the employer of PLAINTIFF and the
17 CALIFORNIA CLASS Members.

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

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2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN DUE**

4 **(Cal. Lab. Code § 203)**

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

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

10 84. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

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

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

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

88. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
who quits, the wages of the employee shall continue as a penalty from the due date

1 thereof at the same rate until paid or until an action therefor is commenced; but the
2 wages shall not continue for more than 30 days.

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

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

12 **EIGHTH CAUSE OF ACTION**

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

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

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

16 91. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 92. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
20 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
23 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
24 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
25 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
26 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
27 subject to arbitration.
28

1 93. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of February 4, 2018
6 until the present (the "AGGRIEVED EMPLOYEES").

7 94. On February 4, 2019, PLAINTIFF gave written notice by certified mail to the
8 Labor and Workforce Development Agency (the "Agency") and the employer of the
9 specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. On February 25, 2019, PLAINTIFF amended the claim and gave written notice by
11 certified mail to the Agency and the employer. See Exhibit #1, attached hereto and
12 incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
13 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
14 PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section
15 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
16 herein defined.

17 95. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because Defendant (a) failed to provide PLAINTIFF and other
19 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (b) failed to provide accurate
20 itemized wage statements, and (c) failed to timely pay wages, all in violation of the applicable
21 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
22 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1197, 1198, 2802 and the applicable
23 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
24 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
25 Private Attorney General Act of 2004 as the representative of the State of California for the
26 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27
28

PRAYER FOR RELIEF

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

3
4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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 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, § 226, and/or § 1194.

DATED: May 3, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: May 3, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #19101

February 25, 2019

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

INTERFACE REHAB, INC.

c/o Jansen Vu
774 S. Placentia Avenue, Suite 200
Placentia, CA 92870

LWDA Case No. LWDA-CM-662707-19

Re: AMENDED Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1197, 1198, 2802, 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 Marcos Antonios (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Interface Rehab, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from May 2015 to July 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 reporting time. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including reporting time wages, minimum wages, and for all of their missed meal and rest breaks. Plaintiff also contends that Defendant unlawfully failed to reimburse Plaintiff for work-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, 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 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, 512, 558, 1194, 1197, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff’s original claim was submitted to LWDA on February 4, 2019 against Defendant. On February 22, 2019, Plaintiff learned that Defendant failed to reimburse Plaintiff for his work-related cell-phone use. Plaintiff therefore amends his February 4, 2019 Notice to add a claim for a violation of California Labor Code Section 2802 in this case.

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 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 Statue 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 Marcos Antonios

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

5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
6 Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
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 Plaintiffs

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

13 MARCOS ANTONIOS, an individual, on
14 behalf of himself and on behalf of all persons
15 similarly situated,

16 Plaintiff,

17 v.

18 INTERFACE REHAB, INC., a California
Corporation; and DOES 1-50, Inclusive,

19 Defendant.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

DEMAND FOR A JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant Interface Rehab, Inc. (“DEFENDANT”) is a corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business in the state of California.

9 2. DEFENDANT operates a short-term rehabilitation facility which caters to
10 patients and their physical, occupational and speech therapy needs. DEFENDANT operates this
11 rehabilitation facility in various locations, including Placentia, California.

12 3. PLAINTIFF was employed by DEFENDANT in California from May of 2015 to
13 July 2018 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all persons who are or previously were employed by DEFENDANT in California and
17 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
21 (\$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 DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
26 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
28 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA
CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been

1 economically injured by DEFENDANT's past and current unlawful conduct, and all other
2 appropriate legal and equitable relief.

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

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

20 **THE CONDUCT**

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

1 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
2 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
3 accordance with DEFENDANT's strict corporate policy and practice.

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

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

26 11. In the course of their employment, PLAINTIFF and other CALIFORNIA
27 CLASS Members as a business expense, were required by DEFENDANT to use their own
28 personal cellular phones as a result of and in furtherance of their job duties as employees for

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

9 12. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
10 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with complete and accurate wage statements which
12 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
13 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
14 an accurate itemized wage statement in writing showing, among other things, gross wages
15 earned and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
17 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
18 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
19 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
20 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
21 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
22 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
23 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

24 13. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
28 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to

1 purposefully avoid the payment for all time worked as required by California law which allows
2 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
3 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 14. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
7 CLASS Members to engage in additional work, this sometimes resulted in a second reporting
8 for work in a single workday. In such a circumstance of a second reporting for work in a single
9 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
10 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for
11 work a second time in any one workday and is furnished less than two (2) hours of work on the
12 second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of
13 pay, which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd.
14 5(B).

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

26 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
28 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty

1 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
2 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
3 from being relieved of all of his duties for the legally required off-duty meal periods. As a
4 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is
5 evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately
6 recording all missed meal and rest periods and/or reporting time wages due, the wage statements
7 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
8 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his overtime wages
9 due to him and DEFENDANT has failed to pay any penalty wages owed to him under
10 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
11 does not exceed the sum or value of \$75,000.

12 **JURISDICTION AND VENUE**

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

17 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
18 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
19 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
20 in this County and/or conducts substantial business in this County, and (ii) committed the
21 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

22 **THE CALIFORNIA CLASS**

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

1 beginning four (4) years prior to the filing of this Complaint and ending on the date as
2 determined by the Court (the “CALIFORNIA CLASS PERIOD”) The amount in controversy
3 for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
4 (\$5,000,000.00).

5 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

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

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

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

26 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

1 a. 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 b. Violating the UCL by unlawfully, unfairly and/or deceptively having in place
5 company policies, practices and procedures that failed to pay all reporting time
6 wages due to PLAINTIFF and the CALIFORNIA CLASS.

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

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

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

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

26 d. The representative PLAINTIFF will fairly and adequately represent and protect
27 the interest of the CALIFORNIA CLASS, and have retained counsel who are
28 competent and experienced in Class Action litigation. There are no material

1 conflicts between the claims of the representative PLAINTIFF and the members
2 of the CALIFORNIA CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

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

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

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

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

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

23 i. With respect to the First Cause of Action, the final relief on behalf of the
24 CALIFORNIA CLASS sought does not relate exclusively to restitution
25 because through this claim PLAINTIFF seeks declaratory relief holding
26 that the DEFENDANT's policy and practices constitute unfair
27 competition, along with declaratory relief, injunctive relief, and incidental
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equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may

1 adversely affect an individual’s job with DEFENDANT or with a
2 subsequent employer, the Class Action is the only means to assert their
3 claims through a representative; and

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

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

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

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

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

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

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

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

15 28. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANT's employees who as have been systematically,
17 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
18 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
19 any additional job titles of similarly situated employees when they have been identified.
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23 **THE CALIFORNIA LABOR SUB-CLASS**

24 29. PLAINTIFF further brings the Second, Third, Fourth and Fifth causes of Action
25 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
26 were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at
27 any time during the period three (3) years prior to the filing of the complaint and ending on the
28 date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")

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

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

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

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

24 33. 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 DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
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- 1 missed meal and rest breaks in violation of the California Labor Code and
- 2 California regulations and the applicable California Wage Order;
- 3 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
- 4 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 5 statements;
- 6 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 7 conduct;
- 8 d. The proper measure of damages and penalties owed to the members of the
- 9 CALIFORNIA LABOR SUB-CLASS; and
- 10 e. Whether DEFENDANT's conduct was willful.

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

- 13 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 14 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 15 statement in writing showing the corresponding correct amount of wages earned
- 16 by the employee;
- 17 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 18 and the other members of the CALIFORNIA CLASS with all legally required
- 19 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 20 rest breaks;
- 21 c. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 22 employee is discharged or quits from employment, the employer must pay the
- 23 employee all wages due without abatement, by failing to tender full payment
- 24 and/or restitution of wages owed or in the manner required by California law to
- 25 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 26 their employment.

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

- 1 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
3 is impracticable and the disposition of their claims as a class will benefit the
4 parties and the Court;
- 5 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
6 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
7 CLASS and will apply uniformly to every member of the CALIFORNIA
8 LABOR SUB-CLASS;
- 9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
11 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
12 employee paid on an hourly basis who was subjected to the DEFENDANT's
13 practice and policy which failed to pay the correct amount of wages due to the
14 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
15 a result of DEFENDANT's employment practices. PLAINTIFF and the members
16 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
17 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
18 misconduct engaged in by DEFENDANT; and
- 19 d. The representative PLAINTIFF will fairly and adequately represent and protect
20 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
21 counsel who are competent and experienced in Class Action litigation. There are
22 no material conflicts between the claims of the representative PLAINTIFF and
23 the members of the CALIFORNIALABOR SUB-CLASS that would make class
24 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
26 Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
- 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or
12 substantially impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
17 uniformly fails to pay all wages due. Including the correct wages for all time
18 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
19 by law;
- 20 c. Common questions of law and fact predominate as to the members of the
21 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
22 violations of California Law as listed above, and predominate over any question
23 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
24 Class Action is superior to other available methods for the fair and efficient
25 adjudication of the controversy, including consideration of:
- 26 i. The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of separate
28 actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA LABOR SUB-CLASS
3 Members when compared to the substantial expense and burden of
4 individual prosecution of this litigation;

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

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

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

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

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

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

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- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. 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

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
2 employed by DEFENDANT in California during the CALIFORNIA LABOR
3 SUB-CLASS PERIOD; and

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

8
9 **FIRST CAUSE OF ACTION**

10 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

22 Any person who engages, has engaged, or proposes to engage in unfair competition may
23 be enjoined in any court of competent jurisdiction. The court may make such orders or
24 judgments, including the appointment of a receiver, as may be necessary to prevent the
25 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).

26 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 226.7, 512, 558, 1194, 1197 and 1198, for which this Court should issue
2 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
3 necessary to prevent and remedy the conduct held to constitute unfair competition, including
4 restitution of wages wrongfully withheld.

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

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

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

23 45. By the conduct alleged herein, DEFENDANT's practices were also unfair and
24 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
25 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
26 members as required by Cal. Lab. Code §§ 226.7 and 512.

27 46. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

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

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

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

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

6
7 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

27 58. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
amount of time they work. As set forth herein, DEFENDANT’S uniform policy and practice

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 59. DEFENDANT’S 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 60. In committing these violations of the California Labor Code, DEFENDANT
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 DEFENDANT 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 61. As a direct result of DEFENDANT’S 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 62. 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 63. By virtue of DEFENDANT’S 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 64. DEFENDANT 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. DEFENDANT systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22 **THIRD CAUSE OF ACTION**

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

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

27 67. 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.

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

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

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

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

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

71. 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.

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

9 76. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

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8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

10 **(Cal. Lab. Code § 226)**

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

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

- 18 a. Gross wages earned,
19 b. (2) total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment
21 of overtime under subdivision (a) of Section 515 or any applicable order
22 of the Industrial Welfare Commission,
23 c. the number of piecerate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis,
25 d. all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item,
27 e. net wages earned,
28 f. the inclusive dates of the period for which the employee is paid,

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

8 81. When DEFENDANT did not accurately record PLAINTIFF's and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
10 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
11 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
12 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
13 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
14 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
15 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
16 the correct name of the legal entity that was the employer of PLAINTIFF and the
17 CALIFORNIA CLASS Members.

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

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2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN DUE**

4 **(Cal. Lab. Code § 203)**

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

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

10 84. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

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

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

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

88. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
who quits, the wages of the employee shall continue as a penalty from the due date

1 thereof at the same rate until paid or until an action therefor is commenced; but the
2 wages shall not continue for more than 30 days.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
14 severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 a. That the Court certify the Second, Third, Fourth, and Fifth Causes of Action
28 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to

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Cal. Code of Civ. Proc. § 382;

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

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

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- 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, and/or § 1194.

1 DATED: February __, 2019

2 **ZAKAY LAW GROUP, APLC**

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4 By: _____

5 Shani O. Zakay
6 Attorney for PLAINTIFF
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26 **DEMAND FOR A JURY TRIAL**

27 PLAINTIFF demands a jury trial on issues triable to a jury.
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1 DATED: February __, 2019

2 **ZAKAY LAW GROUP, APLC**

3
4 By: _____

5 Shani O. Zakay
6 Attorney for PLAINTIFF
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