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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO**

17 JUAN PASALLO, an individual, on behalf of
18 himself and on behalf of all persons similarly
19 situated,

20 Plaintiff,

21 v.

22 GSG PROTECTIVE SERVICES CA INC., a
23 California Corporation; and DOES 1-50,
24 Inclusive,

25 Defendants.

Case No: 37-2018-00037611-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant GSG Protective Services CA Inc. (“DEFENDANT”) is a California
7 corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT is a full service provider of premium security services.
10 DEFENDANT is divided into six divisions which include Personal Protection, Uniformed
11 Officers, Event Services, Risk Management & Security Consulting, Training and Video
12 Surveillance Systems & Monitoring.

13 3. PLAINTIFF was employed by DEFENDANT in California as a CM from July
14 2014 to November 2015 as a Security Guard and was at all times classified by DEFENDANT as
15 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
16 rest periods.

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

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

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

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

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

22 **THE CONDUCT**

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

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

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

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

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

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

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

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

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

20 15. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
22 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
23 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
24 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
25 from being relieved of all of his duties for the legally required off-duty meal periods. As a
26 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is
27 evidenced by DEFENDANT's business records. To date, DEFENDANT has yet to pay
28 PLAINTIFF all of his overtime wages due to him and DEFENDANT has failed to pay any

1 penalty wages owed to him under California Labor Code Section 203. The amount in
2 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

3 **JURISDICTION AND VENUE**

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

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

14 **THE CALIFORNIA CLASS**

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

24 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
26 accordingly.

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
3 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

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

15 22. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

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

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

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

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

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

21 d. The representative PLAINTIFF will fairly and adequately represent and protect
22 the interest of the CALIFORNIA CLASS, and have retained counsel who are
23 competent and experienced in Class Action litigation. There are no material
24 conflicts between the claims of the representative PLAINTIFF and the members
25 of the CALIFORNIA CLASS that would make class certification inappropriate.
26 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
27 CALIFORNIA CLASS Members.

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- 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 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 CLASS for the injuries sustained;

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
3 respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANT; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA CLASS.

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

15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly,
27 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to
28 correctly calculate compensation for the time worked by PLAINTIFF and the other members of

1 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees,
2 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
3 this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied
4 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
5 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
7 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
8 accordingly.

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

14 31. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

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

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

- 1 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 2 b. PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
- 3 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
- 4 Lab. Code § 1198;
- 5 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 6 and the other members of the CALIFORNIA CLASS with all legally required
- 7 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 8 rest breaks;
- 9 d. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 10 employee is discharged or quits from employment, the employer must pay the
- 11 employee all wages due without abatement, by failing to tender full payment
- 12 and/or restitution of wages owed or in the manner required by California law to
- 13 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 14 their employment.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
- 18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
- 19 is impracticable and the disposition of their claims as a class will benefit the
- 20 parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
- 23 CLASS and will apply uniformly to every member of the CALIFORNIA
- 24 LABOR SUB-CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
- 27 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
- 28 employee paid on an hourly basis who was subjected to the DEFENDANT's

1 practice and policy which failed to pay the correct amount of wages due to the
2 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
3 a result of DEFENDANT's employment practices. PLAINTIFF and the members
4 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
6 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

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be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition,
as 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).

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

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

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

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

15 44. By the conduct alleged herein, DEFENDANT's practices were also unfair and
16 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
18 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

27 47. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

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

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

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

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

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

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SECOND CAUSE OF ACTION

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

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

52. 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.

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

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

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

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

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

58. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a

1 result of implementing a uniform policy and practice that denied accurate compensation to the
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
3 overtime pay.

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

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

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

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

24 63. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which were in
26 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194,
27 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
DEFENDANT's business records and witnessed by employees.

1 64. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for their overtime work, PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
5 which are presently unknown to them and which will be ascertained according to proof at trial.

6 65. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
8 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
10 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
12 overtime wages for their overtime worked.

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

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

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THIRD CAUSE OF ACTION

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

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

68. 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.

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

70. 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 meal 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 a meal period was not provided.

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

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5 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

1 75. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
3 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES WHEN DUE**

7 **(Cal. Lab. Code § 203)**

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

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

13 77. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

21 78. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
22 an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately."

24 79. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

3 81. Cal. Lab. Code § 203 provides:

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

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

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

19 **PRAYER FOR RELIEF**

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

22 1. On behalf of the CALIFORNIA CLASS:

- 23 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
24 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
25 b. An order temporarily, preliminarily and permanently enjoining and restraining
26 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
27 c. An order requiring DEFENDANT to pay all overtime wages and all sums
28 unlawfully withheld from compensation due to PLAINTIFFS and the other
members of the CALIFORNIA CLASS; and

1 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

5 a. That the Court certify the Second, Third, Fourth, and Fifth Causes of Action
6 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to
7 Cal. Code of Civ. Proc. § 382;

8 b. Compensatory damages, according to proof at trial, including compensatory
9 damages for overtime compensation due to PLAINTIFF and the other members of
10 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
11 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

12 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
13 the applicable IWC Wage Order;

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

17 3. On all claims:

18 a. An award of interest, including prejudgment interest at the legal rate;

19 b. Such other and further relief as the Court deems just and equitable; and

20 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or §
22 1194.

23 DATED: July 26 2018

24 **ZAKAY LAW GROUP, APLC**

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By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 26, 2018

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF