

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Merced Superior Court
8/12/2020 11:05 AM
Amanda Toste
Clerk of the Superior Court
By: Kristifer Hew, Deputy

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

2 KINGS GAMING, INC. a California Corporation; and DOES 1-50, Inclusive,

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

KALAINA A. DULA on behalf of herself and on behalf of all persons similarly situated,

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

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

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


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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, County of Merced
627 W. 21st St.
Merced, CA 95340

CASE NUMBER: 20CV-02289
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

DATE: 8/12/2020 11:05 AM Amanda Toste Clerk, by  , Deputy
(Fecha) (Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

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

This e-copy is the official court record (GC68150)

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Merced Superior Court
8/12/2020 11:05 AM
Amanda Toste
Clerk of the Superior Court
By: Kristifer Hew, Deputy

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Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

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

11 KALAINA A. DULA on behalf of herself
and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 v.

15 2 KINGS GAMING, INC. a California
Corporation; and DOES 1-50, Inclusive,

16 Defendants.
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Case No: 20CV-02289

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq;*
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq;*
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant 2 KINGS GAMING, INC. (“DEFENDANT” or “Defendant”) is a
6 corporation and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. DEFENDANT, sometimes doing business as “LE Gaming,” operates seven
9 casino-type gaming facilities throughout California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from November
12 2019 to December 2019. PLAINTIFF was at all times relevant mentioned herein classified by
13 DEFENDANT as a non-exempt employee paid on an hourly basis.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period beginning April 6, 2016 and ending on the date as determined by the Court (the
18 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
19 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
22 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
23 which failed to lawfully compensate these employees for all their time worked, and failed to
24 provide lawful meal and rest periods. DEFENDANT’S uniform policy and practice alleged
25 herein is an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained
26 and continue to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
27 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
28 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
the other members of the CALIFORNIA CLASS who have been economically injured by

1 DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and
2 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 sue 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 PLAINTIFFS are informed and believes, and based upon that information and belief allege, 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. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANT'S control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF'S off-duty meal break, as well as before her shift started and after her shift ended.

1 Specifically, on occasion, PLAINTIFF was required to distribute chips to players/customers
2 after already clocking out from her shift. PLAINTIFF was also often interrupted by work
3 assignments during her breaks. Indeed there were many days where PLAINTIFF did not even
4 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
5 Members, from time to time, forfeited minimum wage and overtime compensation by working
6 without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime rates. DEFENDANT’S uniform policy and practice not to pay
8 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
9 DEFENDANT’S business records.

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
11 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
12 CALIFORNIA CLASS Members for the actual time these employees worked each day,
13 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
14 unilaterally alter the time recorded in DEFENDANT’s timekeeping system for PLAINTIFF and
15 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
16 applicable overtime compensation for overtime worked and to avoid paying these employees for
17 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
18 time to time, forfeited time worked by working without their time being accurately recorded and
19 without compensation at the applicable overtime rates.

20 10. The mutability of the timekeeping system also allowed DEFENDANT to alter
21 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’s
22 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
23 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
24 were not at all times provided an off-duty meal break. This practice is a direct result of
25 DEFENDANT’s uniform policy and practice of denying employees uninterrupted thirty (30)
26 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

27 11. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
4 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period each workday in which these employees were required by
6 DEFENDANT to work ten (10) hours of work. In effect, for a period of time, DEFENDANT
7 required PLAINTIFF and other CALIFORNIA CLASS Members to sign an unlawful on-duty
8 meal break agreement. When they did have an opportunity to take their meal breaks,
9 PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on the premises
10 and subject to DEFENDANT's control. PLAINTIFF and the other CALIFORNIA CLASS
11 Members therefore forfeited meal breaks without additional compensation and in accordance
12 with DEFENDANT's strict corporate policy and practice

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

26 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
27 Members missed meal and rest breaks, or when they worked during what was supposed to be
28 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of

1 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
2 among other things, the correct time and overtime worked, including, work performed in excess
3 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
4 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
5 shall furnish each of his or her employees with an accurate itemized wage statement in writing
6 showing, among other things, gross wages earned and all applicable hourly rates in effect during
7 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
8 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
9 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
10 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
11 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

1 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
2 course of their employment with DEFENDANT the PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
4 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
5 benefit of DEFENDANT.

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

16 17. Specifically as to PLAINTIFF’S pay, she was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which she was
21 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
22 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
23 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
24 failed to accurately display payments for missed meal and rest periods for certain pay periods in
25 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS
26 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
27 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
28 \$75,000.

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

22. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of

1 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work,
2 required employees to perform this work and permitted or suffered to permit this work.

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

13 24. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

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

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

- d. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are

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competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT’s policy and practices constitute unfair 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

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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.

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

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 have acted or refused to act on grounds generally applicable to
7 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
8 with 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 29. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANTS’ 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 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
23 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
25 SUB-CLASS”) at any time during the period beginning April 6, 2017 and ending on the date as
26 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
27 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
28 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

19 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

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

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- 1 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 3 thirty (30) minute meal breaks and rest periods;
- 4 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 5 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 6 statements;
- 7 d. Whether DEFENDANT have engaged in unfair competition by the above-listed
- 8 conduct;
- 9 e. The proper measure of damages and penalties owed to the members of the
- 10 CALIFORNIA LABOR SUB-CLASS; and
- 11 f. Whether DEFENDANT's conduct was willful.

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

- 14 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay
- 15 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
- 16 wages due for overtime worked, for which DEFENDANTS are liable pursuant to
- 17 Cal. Lab. Code § 1194;
- 18 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 19 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 20 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 21 Cal. Lab. Code §§ 1194 and 1197;
- 22 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 23 and the other members of the CALIFORNIA CLASS with all legally required
- 24 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 25 rest breaks;
- 26 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 28 statement in writing showing all accurate and applicable overtime rates in effect

1 during the pay period and the corresponding amount of time worked at each
2 overtime rate by the employee;

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

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

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

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

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

22 c. The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
25 employee paid on an hourly basis who was subjected to the DEFENDANT’S
26 practice and policy which failed to pay the correct amount of wages due to the
27 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
28 a result of DEFENDANT’s employment practices. PLAINTIFF and the members

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of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and

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

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the

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CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

38. 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;
- 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;

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- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which 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 classified as non-exempt employees 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.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

1 40. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

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

7 Any person who engages, has engaged, or proposes to engage in unfair competition may
8 be enjoined in any court of competent jurisdiction. The court may make such orders or
9 judgments, including the appointment of a receiver, as may be necessary to prevent the
10 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).

11 42. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
15 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
16 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
17 constitute unfair competition, including restitution of wages wrongfully withheld.

18 43. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
19 unfair in that these practices violated public policy, were immoral, unethical, oppressive
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 44. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
25 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
26 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
27 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
28 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and

1 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
2 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
3 Prof. Code § 17203, including restitution of wages wrongfully withheld.

4 45. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the
6 other members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANT.

8 46. By the conduct alleged herein, DEFENDANT's practices were also unfair and
9 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
10 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

11 47. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
13 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
14 for each workday in which a second off-duty meal period was not timely provided for each ten
15 (10) hours of work.

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

19 49. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
22 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
23 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
24 compete against competitors who comply with the law.

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

3 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
7 unfair business practices, including earned but unpaid wages.

8 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
14 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
15 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
16 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
17 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to
18 engage in these unlawful and unfair business practices.

19
20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

13 59. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
15 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
16 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS.

18 60. DEFENDANT'S uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
20 whole, as a result of implementing a uniform policy and practice that denies accurate
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS in regards to minimum wage pay.

23 61. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculated the correct time worked and consequently underpaid the actual time
25 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

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

28 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by

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

9 **THIRD CAUSE OF ACTION**

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

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

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

17 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
20 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
21 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
22 hours in any workweek.

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

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

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

5 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
6 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
7 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

15 75. In committing these violations of the California Labor Code, DEFENDANT acted
16 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
17 the California Labor Code, the Industrial Welfare Commission requirements and other
18 applicable laws and regulations.

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

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

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

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

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

81. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime 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 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

82. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANT acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of

1 depriving them of their property and legal rights, and otherwise causing them injury in order to
2 increase company profits at the expense of these employees.

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

22 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
23 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
24 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
25 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
26 did not prevent these employees from being relieved of all of their duties for the legally required
27 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide

1 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
2 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
3 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore forfeited meal breaks without additional compensation and in accordance with
5 DEFENDANT's strict corporate policy and practice.

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

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

14
15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

23 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
24 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
25 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
26 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
27 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
28 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

1 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
3 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

12
13 **SIXTH CAUSE OF ACTION**

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

15 **(Cal. Lab. Code §§ 2802)**

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

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

21 93. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

18
19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
21 **(Cal. Lab. Code § 226)**

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

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

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

- a. Gross wages earned;

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

18 98. When DEFENDANT did not accurately record PLAINTIFF's and other
19 CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT
20 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
21 complete and accurate wage statements which failed to show, among other things, missed meal
22 and rest periods and wages owed to PLAINTIFF and other CALIFORNIA CLASS Members.
23 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
24 with an accurate itemized wage statement in writing showing, among other things, gross wages
25 earned and all applicable hourly rates in effect during the pay period and the corresponding
26 amount of time worked at each hourly rate. Aside from the violations listed above in this
27 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
28 all the requirements under California Labor Code 226 *et seq.* As a result, from time to time

1 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

23 101. Cal. Lab. Code § 200 provides that:

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

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

4 103. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14 104. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
15 SUB-CLASS Members’ employment contract.

16 105. Cal. Lab. Code § 203 provides:

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

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

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

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NINTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
[Cal. Lab. Code §§ 2698 et seq.]
(Alleged by PLAINTIFF against all Defendant)

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

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

110. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of June 4, 2019 until the present (the "AGGRIEVED EMPLOYEES").

111. On June 4, 2020, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under

1 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
2 AGGRIEVED EMPLOYEES as herein defined.

3 112. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
6 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
7 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in
8 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
9 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510,
10 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and the applicable Industrial
11 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representative of the State of California for the illegal
14 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, reporting time wages, unreimbursed expenses, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the 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; and
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: 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, §1194 and/or §1197.

DATED: August 11, 2020

ZAKAY LAW GROUP, APLC

By: 
 Shani G. Zakay
 Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: August 11, 2020

ZAKAY LAW GROUP, APLC

By: 
Shani G. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

June 4, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

2 KINGS GAMING, INC

c/o MICHAEL LEBLANC
8141 EAST KAISER BLVD STE 213
ANAHEIM CA 92808

Via Online Submission

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents Kalaina A. Dula (“Plaintiff”) and other aggrieved employees in an action against 2 KINGS GAMING, INC., (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from November 2019 to December 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, and with minimum and overtime wages for all time worked.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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

Respectfully,



Shani O. Zakay
Attorney at Law

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

4 **JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
6 San Diego, CA 92110
7 Telephone: (619)599-8292
Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

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

11 KALAINA A. DULA on behalf of herself
and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 v.

15 2 KINGS GAMING, INC. a California
Corporation; and DOES 1-50, Inclusive,

16 Defendants.
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Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant 2 KINGS GAMING, INC. (“DEFENDANT” or “Defendant”) is a
6 corporation and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. DEFENDANT, sometimes doing business as “LE Gaming,” operates seven
9 casino-type gaming facilities throughout California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from November
12 2019 to December 2019. PLAINTIFF was at all times relevant mentioned herein classified by
13 DEFENDANT as a non-exempt employee paid on an hourly basis.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period beginning April 6, 2016 and ending on the date as determined by the Court (the
18 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
19 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
22 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
23 which failed to lawfully compensate these employees for all their time worked, and failed to
24 provide lawful meal and rest periods. DEFENDANT’S uniform policy and practice alleged
25 herein is an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained
26 and continue to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
27 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
28 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
the other members of the CALIFORNIA CLASS who have been economically injured by

1 DEFENDANT’S past and current unlawful conduct, and all other appropriate legal and
2 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 sue 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 PLAINTIFFS are informed and believes, and based upon that information and belief allege, 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. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANT’S control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF’S off-duty meal break, as well as before her shift started and after her shift ended.

1 Specifically, on occasion, PLAINTIFF was required to distribute chips to players/customers
2 after already clocking out from her shift. PLAINTIFF was also often interrupted by work
3 assignments during her breaks. Indeed there were many days where PLAINTIFF did not even
4 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
5 Members, from time to time, forfeited minimum wage and overtime compensation by working
6 without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime rates. DEFENDANT’S uniform policy and practice not to pay
8 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
9 DEFENDANT’S business records.

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
11 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
12 CALIFORNIA CLASS Members for the actual time these employees worked each day,
13 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
14 unilaterally alter the time recorded in DEFENDANT’s timekeeping system for PLAINTIFF and
15 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
16 applicable overtime compensation for overtime worked and to avoid paying these employees for
17 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
18 time to time, forfeited time worked by working without their time being accurately recorded and
19 without compensation at the applicable overtime rates.

20 10. The mutability of the timekeeping system also allowed DEFENDANT to alter
21 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’s
22 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
23 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
24 were not at all times provided an off-duty meal break. This practice is a direct result of
25 DEFENDANT’s uniform policy and practice of denying employees uninterrupted thirty (30)
26 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

27 11. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
4 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period each workday in which these employees were required by
6 DEFENDANT to work ten (10) hours of work. In effect, for a period of time, DEFENDANT
7 required PLAINTIFF and other CALIFORNIA CLASS Members to sign an unlawful on-duty
8 meal break agreement. When they did have an opportunity to take their meal breaks,
9 PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on the premises
10 and subject to DEFENDANT's control. PLAINTIFF and the other CALIFORNIA CLASS
11 Members therefore forfeited meal breaks without additional compensation and in accordance
12 with DEFENDANT's strict corporate policy and practice

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

26 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
27 Members missed meal and rest breaks, or when they worked during what was supposed to be
28 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of

1 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
2 among other things, the correct time and overtime worked, including, work performed in excess
3 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
4 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
5 shall furnish each of his or her employees with an accurate itemized wage statement in writing
6 showing, among other things, gross wages earned and all applicable hourly rates in effect during
7 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
8 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
9 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
10 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
11 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

1 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
2 course of their employment with DEFENDANT the PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
4 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
5 benefit of DEFENDANT.

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

16 17. Specifically as to PLAINTIFF’S pay, she was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which she was
21 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
22 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
23 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
24 failed to accurately display payments for missed meal and rest periods for certain pay periods in
25 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS
26 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
27 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
28 \$75,000.

1 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work,
2 required employees to perform this work and permitted or suffered to permit this work.

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

13 24. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

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

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

- d. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are

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competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT’s policy and practices constitute unfair 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

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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.

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

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 have acted or refused to act on grounds generally applicable to
7 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
8 with 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 29. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANTS’ 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 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
23 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
25 SUB-CLASS”) at any time during the period beginning April 6, 2017 and ending on the date as
26 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
27 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
28 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

19 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

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

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- 1 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 3 thirty (30) minute meal breaks and rest periods;
- 4 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 5 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 6 statements;
- 7 d. Whether DEFENDANT have engaged in unfair competition by the above-listed
- 8 conduct;
- 9 e. The proper measure of damages and penalties owed to the members of the
- 10 CALIFORNIA LABOR SUB-CLASS; and
- 11 f. Whether DEFENDANT's conduct was willful.

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

- 14 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay
- 15 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
- 16 wages due for overtime worked, for which DEFENDANTS are liable pursuant to
- 17 Cal. Lab. Code § 1194;
- 18 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 19 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 20 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 21 Cal. Lab. Code §§ 1194 and 1197;
- 22 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 23 and the other members of the CALIFORNIA CLASS with all legally required
- 24 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 25 rest breaks;
- 26 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 28 statement in writing showing all accurate and applicable overtime rates in effect

1 during the pay period and the corresponding amount of time worked at each
2 overtime rate by the employee;

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

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

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

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

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

22 c. The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
25 employee paid on an hourly basis who was subjected to the DEFENDANT’S
26 practice and policy which failed to pay the correct amount of wages due to the
27 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
28 a result of DEFENDANT’s employment practices. PLAINTIFF and the members

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of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and

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

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the

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CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

38. 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;
- 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;

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- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which 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 classified as non-exempt employees 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.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

1 40. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

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

7 Any person who engages, has engaged, or proposes to engage in unfair competition may
8 be enjoined in any court of competent jurisdiction. The court may make such orders or
9 judgments, including the appointment of a receiver, as may be necessary to prevent the
10 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).

11 42. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
15 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
16 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
17 constitute unfair competition, including restitution of wages wrongfully withheld.

18 43. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
19 unfair in that these practices violated public policy, were immoral, unethical, oppressive
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 44. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
25 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
26 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
27 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
28 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and

1 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
2 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
3 Prof. Code § 17203, including restitution of wages wrongfully withheld.

4 45. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the
6 other members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANT.

8 46. By the conduct alleged herein, DEFENDANT's practices were also unfair and
9 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
10 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

11 47. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
13 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
14 for each workday in which a second off-duty meal period was not timely provided for each ten
15 (10) hours of work.

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

19 49. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
22 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
23 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
24 compete against competitors who comply with the law.

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

3 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
7 unfair business practices, including earned but unpaid wages.

8 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
14 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
15 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
16 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
17 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to
18 engage in these unlawful and unfair business practices.

19
20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

13 59. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
15 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
16 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS.

18 60. DEFENDANT'S uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
20 whole, as a result of implementing a uniform policy and practice that denies accurate
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS in regards to minimum wage pay.

23 61. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculated the correct time worked and consequently underpaid the actual time
25 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

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

28 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by

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

9 **THIRD CAUSE OF ACTION**

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

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

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

17 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
20 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
21 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
22 hours in any workweek.

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

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

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

5 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
6 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
7 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

15 75. In committing these violations of the California Labor Code, DEFENDANT acted
16 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
17 the California Labor Code, the Industrial Welfare Commission requirements and other
18 applicable laws and regulations.

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

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

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

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

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

81. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime 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 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

82. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANT acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of

1 depriving them of their property and legal rights, and otherwise causing them injury in order to
2 increase company profits at the expense of these employees.

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

22 85. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
23 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
24 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
25 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
26 did not prevent these employees from being relieved of all of their duties for the legally required
27 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide

1 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
2 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
3 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore forfeited meal breaks without additional compensation and in accordance with
5 DEFENDANT's strict corporate policy and practice.

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

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

14
15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

23 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
24 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
25 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
26 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
27 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
28 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

1 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
3 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

12
13 **SIXTH CAUSE OF ACTION**

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

15 **(Cal. Lab. Code §§ 2802)**

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

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

21 93. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

18
19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
21 **(Cal. Lab. Code § 226)**

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

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

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

- a. Gross wages earned;

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

18 98. When DEFENDANT did not accurately record PLAINTIFF's and other
19 CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT
20 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
21 complete and accurate wage statements which failed to show, among other things, missed meal
22 and rest periods and wages owed to PLAINTIFF and other CALIFORNIA CLASS Members.
23 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
24 with an accurate itemized wage statement in writing showing, among other things, gross wages
25 earned and all applicable hourly rates in effect during the pay period and the corresponding
26 amount of time worked at each hourly rate. Aside from the violations listed above in this
27 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
28 all the requirements under California Labor Code 226 *et seq.* As a result, from time to time

1 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

23 101. Cal. Lab. Code § 200 provides that:

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

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

4 103. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14 104. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
15 SUB-CLASS Members’ employment contract.

16 105. Cal. Lab. Code § 203 provides:

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, reporting time wages, unreimbursed expenses, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the 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; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff