

**SUMMONS  
(CITACION JUDICIAL)**

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

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JAN 02 2020

M. Gonzalez

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

AMERIPRISE AUTO & HOME INSURANCE AGENCY, INC., a Corporation; IDS PROPERTY CASUALTY INSURANCE COMPANY, a Corporation; and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MOE POPAL and EMMANUEL DINGLAS, individuals, on behalf of themselves 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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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 OF CALIFORNIA, COUNTY OF RIVERSIDE  
Riverside Historic Courthouse  
4050 Main Street, Riverside, CA 92501

CASE NUMBER:  
*(Número del Caso)*  
**RIC** 2000006

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):*  
Norman B. Blumenthal (Bar # 68687) Fax No.: (858) 551-1232  
Blumenthal Nordrehaug Bhowmik De Blouw LLP Phone No.: (858) 551-1223  
2255 Calle Clara, La Jolla, CA 92037

DATE: **JAN 02 2020** Clerk, by **M. Gonzalez**, 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)).*

[SEAL]

**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:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other *(specify)*:
- by personal delivery on *(date)*:

BY FAX

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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5 Website: www.bamlawca.com

6 Attorneys for Plaintiffs

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JAN 02 2020

M. Gonzalez

7  
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10 MOE POPAL and EMMANUEL  
11 DINGLAS, individuals, on behalf of  
12 themselves and on behalf of all persons  
similarly situated,

13 Plaintiffs,

14 vs.

15 AMERIPRISE AUTO & HOME  
16 INSURANCE AGENCY, INC., a  
17 Corporation; IDS PROPERTY  
CASUALTY INSURANCE  
18 COMPANY, a Corporation; and DOES  
1 through 50, inclusive,

19 Defendants.  
20

Case No. RIC 2000006

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

**DEMAND FOR A JURY TRIAL**

BY FAX

1 Plaintiffs Moe Popal and Emmanuel Dinglas ("PLAINTIFFS"), individuals, on behalf  
2 of themselves and all other similarly situated current and former employees, allege on  
3 information and belief, except their own acts and knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Ameriprise Auto & Home Insurance Company is a corporation that  
7 at all relevant times mentioned herein conducted and continues to conduct substantial business  
8 in the state of California.

9 2. Defendant IDS Property Casualty Insurance Company is a corporation that at all  
10 relevant times mentioned herein conducted and continues to conduct substantial business in the  
11 state of California.

12 3. Defendants Ameriprise Auto & Home Insurance Company and IDS Property  
13 Casualty Insurance Company are the joint employers of PLAINTIFF as evidenced by  
14 paychecks and by the company PLAINTIFF performs work for respectively, and are therefore  
15 jointly responsible as employers for the conduct alleged herein, and are therefore collectively  
16 referred to herein as "DEFENDANT."

17 4. DEFENDANT provides property and casualty insurance brokerage services. The  
18 company offers home and auto insurance, as well as long term care insurance and disability  
19 income insurance. The company was formerly known as Wisconsin Employers Casualty  
20 Company and changed its name in 1986. IDS Property Casualty Insurance Company operates  
21 as a subsidiary of Ameriprise Financial Inc.

22 5. The employees employed in positions with DEFENDANT with the titles of  
23 "Property Claim Representative," "Claims Representative," "Claims Field Representative"  
24 and/or "Field Property Adjuster" (hereinafter collectively the "Claims Representatives") all  
25 performed the same primary job duty which was to provide day-to-day routine clerical work in  
26 the handling and processing of insurance claims on the production side of DEFENDANT's  
27 business.

28 6. Plaintiff Popal was employed by DEFENDANT in California as a Claims

1 Representative from June of 2017 to July 25, 2019. At all times during his employment with  
2 DEFENDANT as a Claims Representative, Plaintiff Popal was classified as a salaried employee  
3 exempt from overtime pay and the legally required meal and rest breaks.

4 7. Plaintiff Dinglas was employed by DEFENDANT in California as a Claims  
5 Representative from August of 2018 to May of 2019. At all times during his employment with  
6 DEFENDANT as a Claims Representative, Plaintiff Dinglas was classified as a salaried  
7 employee exempt from overtime pay and the legally required meal and rest breaks.

8 8. To successfully compete against the other insurance service providers,  
9 DEFENDANT substantially reduces its labor costs by placing the labor burden on a smaller  
10 number of employees that DEFENDANT classifies as exempt from overtime wages. The goal  
11 of overtime laws includes expanding employment throughout the workforce by putting financial  
12 pressure on the employer and nurturing a stout job market, as well as the important public policy  
13 goal of protecting employees in a relatively weak bargaining position against the unfair scheme  
14 of uncompensated overtime work. An employer's obligation to pay its employees wages is  
15 more than a matter of private concern between the parties. That obligation is founded on a  
16 compelling public policy judgment that employees are entitled to work a livable number of  
17 hours at a livable wage. In addition, statutes and regulations that compel employers to pay  
18 overtime relate to fundamental issues of social welfare worthy of protection. The requirement  
19 to pay overtime wages extends beyond the benefits individual workers receive because overtime  
20 wages discourage employers from concentrating work in a few overburdened hands and  
21 encourage employers to instead hire additional employees. Especially in today's economic  
22 climate, the importance of spreading available work to reduce unemployment cannot be  
23 overestimated.

24 9. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
25 class, defined as all persons who are or previously were employed by Defendant Ameriprise  
26 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
27 in California as Claims Representatives and were classified as exempt from overtime wages (the  
28 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years

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

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

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

21  
22 **THE CONDUCT**

23 12. The work schedule for PLAINTIFFS and other CALIFORNIA CLASS  
24 Members is set by DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS  
25 Members work from time to time in excess of eight (8) hours in a workday and/or more than  
26 forty (40) hours in any given workweek.

27 13. PLAINTIFFS and the other CALIFORNIA CLASS Members are not provided  
28 with overtime compensation and other benefits required by law as a result of being classified

1 as "exempt" by DEFENDANT.

2 14. As a matter of company policy, practice, and procedure, DEFENDANT has  
3 unlawfully, unfairly and/or deceptively classified every Claims Representative as exempt  
4 from overtime pay and other related benefits, fails to pay the required overtime  
5 compensation and otherwise fails to comply with all applicable labor laws with respect to  
6 these CMs.

7 15. As part of their business, DEFENDANT employs a fleet of Claims  
8 Representatives. PLAINTIFFS, as a Claims Representative, is engaged in the core, day-to-  
9 day business activities of DEFENDANT. The Claims Representatives engage in the finite  
10 set of non-exempt clerical tasks all in strict compliance with established specific procedures  
11 and protocols which governed and controlled every aspect of the work performed by  
12 PLAINTIFFS and other Claims Representatives. These standardized procedures mirror the  
13 realities of the workplace evidencing a uniformity of the highly skilled clerical work  
14 performed by PLAINTIFFS and other Claims Representatives and negate any exercise of  
15 independent judgment and discretion as to any matter of significance and negate any role in  
16 the participation of formulating DEFENDANT's business policies.

17 16. To perform their finite set of tasks, the Claims Representatives do not engage  
18 in a supervisory role given the constraints placed upon them by company policy. Claims  
19 Representatives do not determine what work is to be done by other employees or in what  
20 time frame. Furthermore, the Claims Representatives also do not have a distinct role in  
21 training other employees or determining what training they are to receive. Lastly,  
22 PLAINTIFFS and other Claims Representatives do not have the authority to hire, fire, or  
23 promote employees, determine their pay rates or benefits, or give raises as they are unable to  
24 make employment-related, personnel decisions. Consequently, PLAINTIFFS and the other  
25 Claims Representatives do not have the authority to decide whether or not an employee  
26 should be disciplined for an infraction. Disciplinary decisions are made by the human  
27 resources department or dictated by company policies. Overall, PLAINTIFFS and other  
28 Claims Representatives recommendations are given little, if any, weight on all the above

1 issues. As a result, PLAINTIFFS and the other Claims Representatives are engaged in a  
2 type of work that requires no exercise of independent judgment or discretion as to any matter  
3 of significance.

4 17. The finite set of tasks required of the Claims Representatives as defined by  
5 DEFENDANT are executed by the Claims Representatives through the performance of non-  
6 exempt labor within a defined manual skill set.

7 18. Although PLAINTIFFS and the other Claims Representatives spend the vast  
8 majority of their time performing these non-exempt tasks, DEFENDANT instituted a blanket  
9 classification policy, practice and procedure by which all of these Claims Representatives are  
10 classified as exempt from overtime compensation. By reason of this exemption practice, policy  
11 and procedure applicable to PLAINTIFFS and the other Claims Representatives who perform  
12 these non-exempt tasks, DEFENDANT committed acts of unfair competition in violation of the  
13 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by  
14 engaging in a company-wide policy, practice and procedure which fails to properly classify  
15 PLAINTIFFS and the other Claims Representatives and thereby fails to pay them overtime  
16 wages for documented overtime worked. The proper classification of these employees is  
17 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation  
18 to meet this burden, DEFENDANT fails to pay all required overtime compensation for work  
19 performed by the members of the CALIFORNIA CLASS and violates the California Labor  
20 Code and regulations promulgated thereunder as herein alleged. In addition, DEFENDANT  
21 fails to provide the legally required off-duty meal and rest breaks to PLAINTIFFS and the other  
22 CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code.  
23 DEFENDANT does not have a policy or practice which provides meal and rest breaks to  
24 PLAINTIFFS and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's  
25 failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with legally required  
26 meal and rest breaks is evidenced by DEFENDANT's business records which contains no  
27 record of these breaks.

28 19. DEFENDANT, as a matter of law, has the burden of proving that (a) employees

1 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable  
2 laws.

3 20. During their employment with DEFENDANT, PLAINTIFFS and the other  
4 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are  
5 nevertheless classified by DEFENDANT as exempt from overtime pay and work more than  
6 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

7 21. Claims Representatives are classified as exempt from California overtime and  
8 related laws by DEFENDANT, however, these employees do not have managerial duties or  
9 authority. Claims Representatives in performing these ongoing day-to-day, non-exempt and  
10 non-managerial tasks have no role in supervising employees and have no authority to make  
11 employment-related decisions relating to DEFENDANT's employees. Furthermore, the Claims  
12 Representatives are tightly controlled by company policy and by their supervisors, do not  
13 exercise discretion or independent judgment as to matters of significance, and their tasks are not  
14 directly related to DEFENDANT's management policies or general business operations.

15 22. PLAINTIFFS and all members of the CALIFORNIA CLASS are classified and  
16 treated by DEFENDANT as exempt at the time of hire and thereafter, DEFENDANT has failed  
17 to take the proper steps to determine whether PLAINTIFFS, and the members of the  
18 CALIFORNIA CLASS, were properly classified under the applicable Industrial Welfare  
19 Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as exempt  
20 from applicable California labor laws. Since DEFENDANT affirmatively and willfully  
21 misclassified PLAINTIFFS and the members of the CALIFORNIA CLASS in compliance with  
22 California labor laws, DEFENDANT's practices violated and continue to violate California law.  
23 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFFS  
24 and each member of the CALIFORNIA CLASS that they are exempt from overtime pay when  
25 DEFENDANT knew or should have known that this statement is false and not based on known  
26 facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result  
27 of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT  
28 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors



1 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them in  
2 accordance with California law.

3 23. When PLAINTIFFS and other CALIFORNIA CLASS Members work overtime,  
4 DEFENDANT also failed to provide PLAINTIFFS and the other CALIFORNIA CLASS  
5 Members with a wage statement in writing that accurately sets forth gross wages earned, all  
6 applicable hourly rates in effect during the pay period and the corresponding amount of time  
7 worked at each hourly rate by the PLAINTIFFS and the other CALIFORNIA CLASS Members.  
8 This conduct violated California Labor Code § 226. The pay stub also does not accurately  
9 display anywhere PLAINTIFFS and the other CALIFORNIA CLASS Members' overtime work  
10 and applicable rates of overtime pay for the pay period.

11 24. By reason of this conduct applicable to PLAINTIFFS and all the CALIFORNIA  
12 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the  
13 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by  
14 engaging in a company-wide policy and procedure which fails to correctly classify  
15 PLAINTIFFS and the CALIFORNIA CLASS of CMs as non-exempt. The proper classification  
16 of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional  
17 disregard of the obligation to meet this burden, DEFENDANT fails to properly calculate and/or  
18 pay all required overtime compensation for work performed by the members of the  
19 CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor Code and  
20 the regulations promulgated thereunder as herein alleged.

21 25. Specifically as to PLAINTIFFS, they perform the finite set of tasks of processing  
22 entry level and intermediate level casualty claims with insureds, claimants, attorneys and  
23 medical professionals, opening and maintaining appropriate reserves throughout the life of the  
24 claim, managing the file through securing necessary documents via phone or written  
25 correspondence, processing of authorizations, making phone calls to employers, clients and  
26 medical providers, opening and processing mail, and processing the acceptance and denial of  
27 insurance claims in accordance with the policies, protocols and operations established by  
28 DEFENDANT. All of these tasks were performed in strict compliance with established

1 specific procedures and protocols which governs and controls every aspect of the work  
2 performed by PLAINTIFFS. PLAINTIFFS use the skill, training, and expertise acquired on the  
3 job to perform their job tasks, and perform these job tasks in compliance with the directives  
4 given to them by other employees of DEFENDANT. During the CALIFORNIA CLASS  
5 PERIOD, PLAINTIFFS as Claims Representatives, have been classified by DEFENDANT as  
6 exempt from overtime pay and work in excess of eight (8) hours in a workday and/or more than  
7 forty (40) hours in a workweek, but as a result of DEFENDANT's misclassification of  
8 PLAINTIFFS as exempt from the applicable California Labor Code provisions, PLAINTIFFS  
9 are not compensated by DEFENDANT for their overtime worked at the applicable overtime  
10 rate. DEFENDANT does not have a policy or practice which provides meal and rest breaks to  
11 PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and rest breaks.  
12 As a consequence of the foregoing, PLAINTIFFS are not provided with accurate and itemized  
13 wage statements showing the gross wages earned, the net wages earned, all applicable hourly  
14 rates in effect during the pay period, including overtime hourly rates, and the corresponding  
15 number of hours worked at each hourly rate, by DEFENDANT during the CALIFORNIA  
16 CLASS PERIOD in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has yet to pay  
17 PLAINTIFFS all of their wages due to them and DEFENDANT has failed to pay any penalty  
18 wages owed to them under California Labor Code Section 203. The amount in controversy for  
19 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

## 20 21 **JURISDICTION AND VENUE**

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

26 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
27 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and  
28 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities

1 in this County and/or conducts substantial business in this County, and (ii) committed the  
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS

3 **THE CALIFORNIA CLASS**

4 28. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
5 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
6 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California  
7 Class, defined as all persons who are or previously were employed by Defendants Ameriprise  
8 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
9 in California as Claims Representatives and were classified as exempt from overtime wages (the  
10 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years  
11 prior to the filing of this complaint and ending on the date as determined by the Court (the  
12 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
13 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

17 30. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
18 Commission ("IWC") Wage Order Requirements, and the applicable provisions of California  
19 law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT  
20 unfairly, unlawfully, and deceptively instituted a practice to ensure that the employees employed  
21 in a CM position are not properly classified as non-exempt from the requirements of California  
22 Labor Code §§ 510, *et seq.*

23 31. DEFENDANT has the burden of proof to make sure that each and every employee  
24 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*  
25 DEFENDANT, however, had in place during the CALIFORNIA CLASS PERIOD and still has  
26 in place a policy and practice that misclassifies the CALIFORNIA CLASS Members as exempt.  
27 DEFENDANT's policy and practice in place at all times during the CALIFORNIA CLASS  
28 PERIOD and currently in place is to classify each and every CALIFORNIA CLASS Member

1 as exempt from the requirements of the California Labor Code §§ 510, *et seq.* This common  
2 business practice applicable to each and every CALIFORNIA CLASS Member can be  
3 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &  
4 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not  
5 elements of this claim.

6 32. At no time during PLAINTIFFS employment with DEFENDANT has any Claims  
7 Representative been reclassified as non-exempt from the applicable requirements of California  
8 Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially classified  
9 as exempt upon being hired.

10 33. Any individual declarations of any employees offered at this time purporting to  
11 indicate that one or more Claims Representatives may have been properly classified is of no  
12 force or affect absent contemporaneous evidence that DEFENDANT's system did not  
13 misclassify PLAINTIFFS and the other CALIFORNIA CLASS Members as exempt pursuant  
14 to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,  
15 DEFENDANT's business practice is unlawful, unfair and/or deceptive under the UCL and may  
16 be so adjudicated on a class-wide basis. As a result of the UCL violations, PLAINTIFFS and  
17 the CALIFORNIA CLASS Members are entitled to compel DEFENDANT to provide  
18 restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to retribute these  
19 funds to PLAINTIFFS and the CALIFORNIA CLASS Members according to proof.

20 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
21 CLASS Members is impracticable.

22 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
23 law by:

- 24 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
25 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively  
26 having in place company policies, practices and procedures that  
27 misclassified PLAINTIFFS and the members of the CALIFORNIA  
28 CLASS as exempt;

- 1 (b) Committing an act of unfair competition in violation of the UCL, by  
2 unlawfully, unfairly, and/or deceptively failing to have in place a company  
3 policy, practice and procedure that accurately determines the amount of  
4 working time spent by PLAINTIFFS and the members of the  
5 CALIFORNIA CLASS performing non-exempt labor;
- 6 (c) Committing an act of unfair competition in violation of the UCL, by  
7 having in place a company policy, practice and procedure that fails to  
8 reclassify as non-exempt those members of the CALIFORNIA CLASS  
9 whose actual tasks were comprised of non-exempt job functions;
- 10 (d) Committing an act of unfair competition in violation of the UCL, by  
11 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct  
12 overtime pay to PLAINTIFFS and the members of the CALIFORNIA  
13 CLASS who are improperly classified as exempt, and retaining the unpaid  
14 overtime to the benefit of DEFENDANT; and,
- 15 (e) Committing an act of unfair competition in violation of the UCL, by  
16 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and  
17 the CALIFORNIA CLASS members.

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

- 20 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
21 that the joinder of all such persons is impracticable and the disposition of  
22 their claims as a class will benefit the parties and the Court;
- 23 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are  
24 raised in this Complaint are common to the CALIFORNIA CLASS will  
25 apply to every member of the CALIFORNIA CLASS;
- 26 (c) The claims of the representative PLAINTIFFS are typical of the claims of  
27 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the  
28 other members of the CALIFORNIA CLASS, were initially classified as

1 exempt upon hiring based on the defined corporate policies and practices  
2 and labored under DEFENDANT's procedure that fails to properly  
3 classify as non-exempt PLAINTIFFS and the members of the  
4 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a  
5 result of DEFENDANT's employment practices. PLAINTIFFS and the  
6 members of the CALIFORNIA CLASS were and are similarly or  
7 identically harmed by the same unlawful, deceptive, unfair and pervasive  
8 misconduct engaged in by DEFENDANT by deceptively advising all  
9 Claims Representatives that they were exempt from overtime wages based  
10 on the defined corporate policies and practices, and unfairly failing to pay  
11 overtime to these employees who were improperly classified as exempt;  
12 and,

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

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

23 (a) Without class certification and determination of declaratory, statutory and  
24 other legal questions within the class format, prosecution of separate  
25 actions by individual members of the CALIFORNIA CLASS will create  
26 the risk of:

27 1) Inconsistent or varying adjudications with respect to individual  
28 members of the CALIFORNIA CLASS which would establish

1 incompatible standards of conduct for the parties opposing the  
2 CALIFORNIA CLASS; and/or,

3 2) Adjudication with respect to individual members of the  
4 CALIFORNIA CLASS which would as a practical matter be  
5 dispositive of interests of the other members not party to the  
6 adjudication or substantially impair or impede their ability to  
7 protect their interests.

8 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
9 act on grounds generally applicable to the CALIFORNIA CLASS, making  
10 appropriate class-wide relief with respect to the CALIFORNIA CLASS  
11 as a whole in that DEFENDANT classified and treated the Claims  
12 Representatives as exempt and, thereafter, failed to take proper steps to  
13 determine whether the Claims Representatives were properly classified as  
14 exempt, and thereby denied these employees overtime wages as required  
15 by law;

16 1) With respect to the First Cause of Action, the final relief on behalf  
17 of the CALIFORNIA CLASS sought does not relate exclusively to  
18 restitution because through this claim the PLAINTIFFS seek  
19 declaratory relief holding that DEFENDANT's policies and  
20 practices constitute unfair competition, along with incidental  
21 equitable relief as may be necessary to remedy the conduct declared  
22 to constitute unfair competition;

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

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- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
  - B. 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;
- 3) In the context of wage litigation because as a practical matter a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) 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



1 litigation that is likely to result in the absence of certification of  
2 this Action pursuant to Cal. Code of Civ. Proc. § 382.

3 38. This Court should permit this Action to be maintained as a Class Action pursuant  
4 to Cal. Code of Civ. Proc. § 382, because:

- 5 (a) The questions of law and fact common to the CALIFORNIA CLASS  
6 predominate over any question affecting only individual CALIFORNIA  
7 CLASS Members because DEFENDANT's employment practices were  
8 applied with respect to the CALIFORNIA CLASS;
- 9 (b) A Class Action is superior to any other available method for the fair and  
10 efficient adjudication of the claims of the members of the CALIFORNIA  
11 CLASS because in the context of employment litigation a substantial  
12 number of individual CALIFORNIA CLASS Members will avoid  
13 asserting their rights individually out of fear of retaliation or adverse  
14 impact on their employment;
- 15 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
16 impractical to bring all members of the CALIFORNIA CLASS before the  
17 Court;
- 18 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be  
19 able to obtain effective and economic legal redress unless the action is  
20 maintained as a Class Action;
- 21 (e) There is a community of interest in obtaining appropriate legal and  
22 equitable relief for the acts of unfair competition, statutory violations and  
23 other improprieties, and in obtaining adequate compensation for the  
24 injuries which DEFENDANT's actions have inflicted upon the  
25 CALIFORNIA CLASS;
- 26 (f) There is a community of interest in ensuring that the combined assets of  
27 DEFENDANT are sufficient to adequately compensate the members of the  
28 CALIFORNIA CLASS for the injuries sustained;

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
2 to the CALIFORNIA CLASS, thereby making final class-wide relief  
3 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 4 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
5 the business records of DEFENDANT. The CALIFORNIA CLASS  
6 consists of all DEFENDANT's Claims Representatives who were  
7 classified as exempt and who were employed in California during the  
8 CALIFORNIA CLASS PERIOD; and,
- 9 (i) Class treatment provides manageable judicial treatment calculated to bring  
10 an efficient and rapid conclusion to all litigation of all wage and hour  
11 related claims arising out of the conduct of DEFENDANT as to the  
12 members of the CALIFORNIA CLASS.

13 39. DEFENDANT maintains records from which the Court can ascertain and identify  
14 by name and job title, each of DEFENDANT's employees who have been intentionally  
15 subjected to DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend  
16 the Complaint to include any additional job titles of similarly situated employees when they  
17 have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 41. DEFENDANT, in violation of the applicable California Labor Code ("Labor  
28 Code"), and Industrial Welfare Commission ("IWC") Wage Order Requirements intentionally,

1 knowingly, and wilfully misclassified the PLAINTIFFS and the other members of the  
2 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime  
3 wages and other labor laws based on DEFENDANT's comprehensive policies and procedures  
4 in order to avoid the payment of overtime wages by misclassifying their positions as exempt  
5 from overtime wages and other labor laws. To the extent equitable tolling operates to toll  
6 claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA  
7 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

8 42. DEFENDANT maintains records from which the Court can ascertain and identify  
9 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS  
10 Members have been intentionally misclassified as exempt as a matter of DEFENDANT's  
11 corporate policies, practices and procedures. PLAINTIFFS will seek leave to amend the  
12 Complaint to include these additional job titles when they have been identified.

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

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

- 17 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation  
18 to members of the CALIFORNIA LABOR SUB-CLASS in violation of  
19 the California Labor Code and California regulations and the applicable  
20 California Wage Order;
- 21 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
22 non-exempt employees entitled to overtime compensation for overtime  
23 worked under the overtime pay requirements of California law;
- 24 (c) Whether DEFENDANT's policy and practice of classifying the  
25 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime  
26 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS  
27 Members overtime violate applicable provisions of California law;
- 28 (d) Whether DEFENDANT unlawfully fails to keep and furnish

1 CALIFORNIA LABOR SUB-CLASS Members with accurate records of  
2 overtime worked; and,

3 (e) The proper measure of damages and penalties owed to the members of the  
4 CALIFORNIA LABOR SUB-CLASS.

5 45. DEFENDANT erroneously classifies all Claims Representatives as exempt from  
6 overtime wages and other labor laws. All Claims Representatives, including PLAINTIFFS,  
7 perform the same finite set of tasks and are paid by DEFENDANT according to company  
8 procedures, which, as alleged herein above, fails to correctly pay overtime compensation. This  
9 business practice has been applied to each and every member of the CALIFORNIA LABOR  
10 SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide  
11 basis.

12 46. 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 misclassifying and thereby  
15 failing to pay PLAINTIFFS and the members of the CALIFORNIA  
16 LABOR SUB-CLASS the correct overtime pay for a workday longer than  
17 eight (8) hours and/or a workweek longer than forty (40) hours for which  
18 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

19 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and  
20 the members of the CALIFORNIA LABOR SUB-CLASS who are  
21 improperly classified as exempt with an accurate itemized statement in  
22 writing showing the gross wages earned, the net wages earned, all  
23 applicable hourly rates in effect during the pay period and the  
24 corresponding amount of time worked at each hourly rate by the employee  
25 when these employees worked overtime from time to time in a pay period;

26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS with all legally required off-duty, uninterrupted thirty (30) minute

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meal breaks and the legally required rest breaks; and,

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

47. This 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 LABOR SUB-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, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were improperly classified as exempt and denied overtime pay as a result of DEFENDANT’s classification practices. PLAINTIFFS and all the other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT’s violations of the laws of California; and,
- (d) The representative PLAINTIFFS 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

1 representative PLAINTIFFS and the members of the CALIFORNIA  
2 LABOR SUB-CLASS that would make class certification inappropriate.  
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously  
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

7 (a) Without class certification and determination of declaratory, statutory and  
8 other legal questions within the class format, prosecution of separate  
9 actions by individual members of the CALIFORNIA LABOR SUB-  
10 CLASS will create the risk of:

11 1) Inconsistent or varying adjudications with respect to individual  
12 members of the CALIFORNIA LABOR SUB-CLASS which  
13 would establish incompatible standards of conduct for the parties  
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,

15 2) Adjudication with respect to individual members of the  
16 CALIFORNIA LABOR SUB-CLASS which would as a practical  
17 matter be dispositive of interests of the other members not party to  
18 the adjudication or substantially impair or impede their ability to  
19 protect their interests.

20 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
21 or refused to act on grounds generally applicable to the CALIFORNIA  
22 LABOR SUB-CLASS, making appropriate class-wide relief with respect  
23 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
24 DEFENDANT classified and treated the Claims Representatives as  
25 exempt and, thereafter, failed to take proper steps to determine whether  
26 the Claims Representatives were properly classified as exempt, and  
27 thereby denied these employees overtime wages as required by law;

28 (c) Common questions of law and fact predominate as to the members of the

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

- 7 1) The interests of the members of the CALIFORNIA LABOR SUB-  
8 CLASS in individually controlling the prosecution or defense of  
9 separate actions in that the substantial expense of individual actions  
10 will be avoided to recover the relatively small amount of economic  
11 losses sustained by the individual CALIFORNIA LABOR SUB-  
12 CLASS Members when compared to the substantial expense and  
13 burden of individual prosecution of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative  
15 litigation that would create the risk of:
  - 16 A. Inconsistent or varying adjudications with respect to  
17 individual members of the CALIFORNIA LABOR SUB-  
18 CLASS, which would establish incompatible standards of  
19 conduct for DEFENDANT; and/or,
  - 20 B. Adjudications with respect to individual members of the  
21 CALIFORNIA LABOR SUB-CLASS would as a practical  
22 matter be dispositive of the interests of the other members  
23 not parties to the adjudication or substantially impair or  
24 impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of  
26 individual CALIFORNIA LABOR SUB-CLASS Members will  
27 avoid asserting their legal rights out of fear of retaliation by  
28 DEFENDANT, which may adversely affect an individual's job

1 with DEFENDANT or with a subsequent employer, the Class  
2 Action is the only means to assert their claims through a  
3 representative; and,

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

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

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR  
12 SUB-CLASS predominate over any question affecting only individual  
13 CALIFORNIA LABOR SUB-CLASS Members;
- 14 (b) A Class Action is superior to any other available method for the fair and  
15 efficient adjudication of the claims of the members of the CALIFORNIA  
16 LABOR SUB-CLASS because in the context of employment litigation a  
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS  
18 Members will avoid asserting their rights individually out of fear of  
19 retaliation or adverse impact on their employment;
- 20 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so  
21 numerous that it is impractical to bring all members of the CALIFORNIA  
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS  
24 Members, will not be able to obtain effective and economic legal redress  
25 unless the action is maintained as a Class Action;
- 26 (e) There is a community of interest in obtaining appropriate legal and  
27 equitable relief for the acts of unfair competition, statutory violations and  
28 other improprieties, and in obtaining adequate compensation for the



1 damages and injuries which DEFENDANT's actions have inflicted upon  
2 the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;

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

10 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
11 ascertainable from the business records of DEFENDANT. The  
12 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
13 CLASS Members who were employed by DEFENDANT in California  
14 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

15 (i) Class treatment provides manageable judicial treatment calculated to bring  
16 a efficient and rapid conclusion to all litigation of all wage and hour  
17 related claims arising out of the conduct of DEFENDANT.

18  
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

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

22 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

23 50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
25 Complaint.

26 51. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
27 Code § 17021.

28 52. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
3 competition as follows:

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

12 California Business & Professions Code § 17203.

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

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

25 55. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
26 fraudulent in that DEFENDANT's policy and practice is to represent to PLAINTIFFS and other  
27 CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact these  
28 representations are false and likely to deceive, for which this Court should issue injunctive and  
equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
wrongfully withheld.

56. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair  
and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANT.

3 57. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
4 deceptive in that DEFENDANT's policies, practices and procedures fail to provide mandatory  
5 meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

6 58. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each  
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty  
8 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
9 for each workday in which a second off-duty meal period was not timely provided for each ten  
10 (10) hours of work.

11 59. PLAINTIFFS further demand on behalf of themselves and on behalf of each  
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty  
13 paid rest period was not timely provided as required by law.

14 60. By and through the unlawful and unfair business practices described herein,  
15 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
16 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and  
17 benefits guaranteed by law and contract, all to the detriment of these employees and to the  
18 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors  
19 who comply with the law.

20 61. All the acts described herein as violations of, among other things, the California  
21 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,  
22 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and  
23 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute  
24 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§  
25 17200, *et seq.*

26 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
27 to, and do, seek such relief as may be necessary to restore to them the money and property  
28 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
2 unfair business practices, including earned but unpaid overtime wages for all overtime worked.

3 63. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
4 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair  
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
6 engaging in any unlawful and unfair business practices in the future.

7 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,  
8 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
9 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
10 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and  
11 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
12 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to  
13 engage in these unlawful and unfair business practices.

14  
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

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

18 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
19 **Defendants)**

20 65. PLAINTIFFS, 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 66. Cal. Lab. Code § 510 states in relevant part:

24 Eight hours of labor constitutes a day's work. Any work in excess of eight hours  
25 in one workday and any work in excess of 40 hours in any one workweek and the  
26 first eight hours worked on the seventh day of work in any one workweek shall  
27 be compensated at the rate of no less than one and one-half times the regular rate  
28 of pay for an employee. Any work in excess of 12 hours in one day shall be  
compensated at the rate of no less than twice the regular rate of pay for an  
employee. In addition, any work in excess of eight hours on any seventh day of  
a workweek shall be compensated at the rate of no less than twice the regular rate  
of pay of an employee.

1           67. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of  
2 labor is entitled to one day's rest therefrom in seven."

3           68. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees  
4 to work more than six days in seven."

5           69. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime  
6 rate of compensation required to be paid to a nonexempt full-time salaried employee, the  
7 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

8           70. Cal. Lab. Code § 1194 states:

9           Notwithstanding any agreement to work for a lesser wage, any employee  
10 receiving less than the legal minimum wage or the legal overtime compensation  
11 applicable to the employee is entitled to recover in a civil action the unpaid  
balance of the full amount of this minimum wage or overtime compensation,  
including interest thereon, reasonable attorney's fees, and costs of suit.

12           71. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard  
13 conditions of labor fixed by the commission shall be the maximum hours of work and the  
14 standard conditions of labor for employees. The employment of any employee for longer hours  
15 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

16           72. DEFENDANT has intentionally designated certain employees as "exempt"  
17 employees, by their job title alone and without regard to DEFENDANT's realistic expectations  
18 and actual overall requirements of the job, including PLAINTIFFS and the other members of  
19 the CALIFORNIA LABOR SUB-CLASS who work on the production and non-managerial side  
20 of DEFENDANT's business. This is done in an illegal attempt to avoid payment of overtime  
21 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission  
22 requirements.

23           73. For an employee to be exempt as a bona fide "executive," all the following criteria  
24 must be met and DEFENDANT has the burden of proving that:

25           (a) The employee's primary duty must be management of the enterprise, or of a  
26 customarily recognized department or subdivision; and,

27           (b) The employee must customarily and regularly direct the work of at least two (2)  
28 or more other employees; and,

- 1 (c) The employee must have the authority to hire and fire, or to command particularly
- 2 serious attention to his or her recommendations on such actions affecting other
- 3 employees; and,
- 4 (d) The employee must customarily and regularly exercise discretion and independent
- 5 judgment; and,
- 6 (e) The employee must be primarily engaged in duties which meet the test of
- 7 exemption.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they  
9 all fail to meet the requirements of being an "executive" within the meaning of the applicable  
10 Wage Order.

11 74. For an employee to be exempt as a bona fide "administrator," all of the following  
12 criteria must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee must perform office or non-manual work directly related to
- 14 management policies or general business operation of the employer; and,
- 15 (b) The employee must customarily and regularly exercise discretion and independent
- 16 judgment; and,
- 17 (c) The employee must regularly and directly assist a proprietor or an exempt
- 18 administrator; or,
- 19 (d) The employee must perform, under only general supervision, work requiring
- 20 special training, experience, or knowledge; or,
- 21 (e) The employee must execute special assignments and tasks under only general
- 22 supervision; and,
- 23 (f) The employee must be primarily engaged in duties which meet the test of
- 24 exemption.

25 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
26 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
27 Order.

28 75. The Industrial Welfare Commission, in Wage Order 4-2001, at section

1 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
2 with to place an employee in the "professional" exempt category. For an employee to be exempt  
3 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
4 burden of proving that:

5 (a) The employee is primarily engaged in an occupation commonly recognized as a  
6 learned or artistic profession. For the purposes of this subsection, "learned or  
7 artistic profession" means an employee who is primarily engaged in the  
8 performance of:

- 9 1) Work requiring knowledge of an advanced type in a field or science or  
10 learning customarily acquired by a prolonged course of specialized  
11 intellectual instruction and study, as distinguished from a general  
12 academic education and from an apprenticeship, and from training in the  
13 performance of routine mental, manual, or physical processes, or work that  
14 is an essential part or necessarily incident to any of the above work; or,
- 15 2) Work that is original and creative in character in a recognized field of  
16 artistic endeavor, and the result of which depends primarily on the  
17 invention, imagination or talent of the employee or work that is an  
18 essential part of or incident to any of the above work; and,
- 19 3) Whose work is predominately intellectual and varied in character (as  
20 opposed to routine mental, manual, mechanical, or physical work) and is  
21 of such character cannot be standardized in relation to a given period of  
22 time.

23 (b) The employee must customarily and regularly exercise discretion and independent  
24 judgment; and,

25 (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
26 state minimum wage for full-time employment.

27 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they  
28 all fail to meet the requirements of being a "professional" within the meaning of the applicable

1 Wage Order.

2 76. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS, do not fit the definition of an exempt executive, administrative, or professional  
4 employee because:

5 (a) They did not work as executives or administrators; and,

6 (b) The professional exemption does not apply to the PLAINTIFFS, nor to the other  
7 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet  
8 all the applicable requirements to work under the professional exemption for the  
9 reasons set forth above in this Complaint.

10 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS, and  
11 the other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours  
12 in a workday and/or more than forty (40) hours in a workweek.

13 78. DEFENDANT fails to pay PLAINTIFFS, and the other members of the  
14 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in  
15 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and  
16 1198, even though PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
17 CLASS, are required to work, and do in fact work, overtime.

18 79. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
19 to PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their  
20 overtime work, PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are  
22 presently unknown to them and which will be ascertained according to proof at trial.

23 80. DEFENDANT knew or should have known that PLAINTIFFS, and the other  
24 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and  
25 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay  
26 them for their overtime labor.

27 81. Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
28 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,



1 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
2 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined  
3 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their  
4 employment, these employees would also be entitled to waiting time penalties under Cal. Lab.  
5 Code § 203, which penalties are sought herein. Further, PLAINTIFFS, and the other members  
6 of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

7 82. In performing the acts and practices herein alleged in violation of labor laws and  
8 refusing to provide the requisite overtime compensation, DEFENDANT acted and continues  
9 to act intentionally, oppressively, and maliciously toward PLAINTIFFS, and toward the other  
10 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of  
11 their legal rights, or the consequences to them, and with the despicable intent of depriving them  
12 of their property and legal rights and otherwise causing them injury in order to increase  
13 corporate profits at the expense of PLAINTIFFS and the members of the CALIFORNIA  
14 LABOR SUB-CLASS.

15  
16 **THIRD CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
20 **Defendants)**

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

24 84. During the CALIFORNIA CLASS PERIOD from time to time, DEFENDANT  
25 fails to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
27 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
28 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work  
2 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are from  
3 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
4 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
5 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
6 by DEFENDANT's business records. As a result, PLAINTIFFS and other members of the  
7 CALIFORNIA LABOR SUB-CLASS therefore forfeit meal breaks without additional  
8 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

18  
19 **FOURTH CAUSE OF ACTION**

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

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

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
23 **Defendants)**

24 87. PLAINTIFFS, 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 88. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are  
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods

1 from time to time. Further, from time to time, these employees are denied their first rest periods  
2 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first  
3 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and  
4 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some  
5 shifts worked of ten (10) hours or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-  
6 CLASS Members are also not provided with one hour wages in lieu thereof. As a result of their  
7 rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
8 Members are periodically denied their proper rest periods by DEFENDANT and  
9 DEFENDANT's managers.

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

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

19  
20 **FIFTH CAUSE OF ACTION**

21 **For Failure to Provide Accurate Itemized Statements**

22 **[Cal. Lab. Code § 226]**

23 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
24 **Defendants)**

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

28 92. Cal. Labor Code § 226 provides that an employer must furnish employees with

1 an "accurate itemized" statement in writing showing:

2 (1) gross wages earned,

3 (2) total hours worked by the employee, except for any employee whose compensation  
4 is solely based on a salary and who is exempt from payment of overtime under  
5 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
6 Commission,

7 (3) the number of piecerate units earned and any applicable piece rate if the employee  
8 is paid on a piece-rate basis,

9 (4) all deductions, provided that all deductions made on written orders of the employee  
10 may be aggregated and shown as one item,

11 (5) net wages earned,

12 (6) the inclusive dates of the period for which the employee is paid,

13 (7) the name of the employee and his or her social security number, except that by  
14 January 1, 2008, only the last four digits of his or her social security number or an  
15 employee identification number other than a social security number may be shown on  
16 the itemized statement,

17 (8) the name and address of the legal entity that is the employer, and

18 (9) all applicable hourly rates in effect during the pay period and the corresponding  
19 number of hours worked at each hourly rate by the employee.

20 93. In the pay periods PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
21 Members work overtime, DEFENDANT violated Labor Code § 226, in that DEFENDANT fails  
22 to provide an accurate wage statement in writing that properly and accurately itemizes the actual  
23 time worked by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS at the effective regular rates of pay and the effective overtime rates of pay.

25 94. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
26 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
27 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
28 true time worked and the amount of employment taxes which were not properly paid to state and

1 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS, and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated  
3 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for  
4 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according  
5 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFFS and each  
6 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

7  
8 **SIXTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
12 **Defendants)**

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

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

17 As used in this article:

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

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

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

25 98. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

3 99. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR  
4 SUB-CLASS Members' employment contract.

5 100. Cal. Lab. Code § 203 provides:

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

11 101. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
12 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to  
13 these employees as required by law.

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

20 **SEVENTH CAUSE OF ACTION**

21 **For Violation of the Private Attorneys General Act**

22 **[Cal. Lab. Code §§ 2698, *et seq.*]**

23 **(By PLAINTIFFS and Against All Defendants)**

24 103. PLAINTIFFS incorporate by reference the allegations set forth in paragraphs  
25 1-102, supra, as though fully set forth at this point.

26 104. PAGA is a mechanism by which the State of California itself can enforce state  
27 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the  
28 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

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

5 105. PLAINTIFFS, and such persons that may be added from time to time who satisfy  
6 the requirements and exhaust the administrative procedures under the Private Attorney General  
7 Act, bring this Representative Action on behalf of the State of California with respect to  
8 themselves and all individuals who are or previously were employed by Defendant Ameriprise  
9 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
10 in California as Claims Representatives and were classified as exempt from overtime wages  
11 (the "AGGRIEVED EMPLOYEES") during the time period of August 22, 2018 until a date as  
12 determined by the Court (the "PAGA PERIOD").

13 106. On August 22, 2019, PLAINTIFFS gave written notice by electronic mail to the  
14 Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
15 employer of the specific provisions of this code alleged to have been violated as required by  
16 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference  
17 herein. On September 10, 2019, PLAINTIFFS gave additional and/or an amended written  
18 notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and  
19 by certified mail to the employer of the specific provisions of this code alleged to have been  
20 violated as required by Labor Code § 2699.3 See **Exhibit #2**, attached hereto and incorporated  
21 by this reference herein. The August 22, 2019 written notice incorrectly stated Defendant IDS  
22 Property Casualty Insurance Company's mailing address and therefore the amended notice was  
23 intended to correct the mailing address of Defendant IDS Property Casualty Insurance  
24 Company. The statutory waiting period for PLAINTIFFS to add these allegations to the  
25 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now  
26 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies  
27 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

28 107. The policies, acts and practices heretofore described were and are an unlawful

1 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other  
2 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record  
3 and provide legally required meal and rest periods, (c) failed to pay overtime wages, and (d)  
4 failed to pay wages when due, all in violation of the applicable Labor Code sections listed in  
5 Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1198,  
6 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result  
7 of such conduct.<sup>1</sup> PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the  
8 Labor Code Private Attorney General Act of 2004 as the representatives of the State of  
9 California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED  
10 EMPLOYEES.

11 108. All of the conduct and violations alleged herein occurred during the  
12 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not  
13 affect PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those  
14 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks*  
15 *Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

16  
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and  
19 severally, as follows:

- 20 1. On behalf of the CALIFORNIA CLASS:
- 21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
22 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;
  - 23 B) An order requiring DEFENDANT to correctly calculate and pay all overtime  
24 wages and all sums unlawfully withheld from compensation due to PLAINTIFFS  
25 and the other members of the CALIFORNIA CLASS;
  - 26 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund

27  
28 

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<sup>1</sup>Plaintiffs specifically exclude and/or do not allege any claims under California  
Labor Code §558(a)(3).



1 for restitution of the sums incidental to DEFENDANT's violations due to the  
2 PLAINTIFFS and to the other members of the CALIFORNIA CLASS according  
3 to proof; and,

4 D) An order temporarily, preliminarily, and permanently enjoining and restraining  
5 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

7 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
8 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action  
9 pursuant to California Code of Civil Procedure § 382;

10 B) Compensatory damages, according to proof at trial, for overtime compensation  
11 due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
12 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD  
13 plus interest thereon at the statutory rate;

14 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
15 in which a violation occurs and one hundred dollars (\$100) per each member of  
16 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
18 an award of costs for violation of Cal. Lab. Code § 226;

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


23 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
24 the applicable IWC Wage Order.

25 3. On behalf of the State of California and with respect to all AGGRIEVED  
26 EMPLOYEES:

27 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys  
28 General Act of 2004.

- 1 4. On all claims:  
2 A) An award of interest, including prejudgment interest at the legal rate;  
3 B) Such other and further relief as the Court deems just and equitable; and,  
4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the  
5 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.

6  
7 Dated: December 31, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP


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10 By: \_\_\_\_\_  
11 Norman B. Blumenthal  
12 Attorneys for Plaintiffs  
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**DEMAND FOR A JURY TRIAL**

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

Dated: December 31, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By:   
Norman B. Blumenthal  
Attorneys for Plaintiffs

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# EXHIBIT 1

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:  
1004

August 22, 2019  
CA1798

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Ameriprise Auto & Home Insurance Agency, Inc.  
Agency Online Filing

Certified Mail # 70181830000123837451

C T Corporation System

818 West Seventh Street, Ste. 930

Los Angeles, CA 90017

IDS Property Casualty Insurance Company

Certified Mail #70181830000123837468

Chief Financial Officer

200 E. Gaines Street

Tallahassee, FL 32399-0000

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of Industrial Wage Order 7(A)(3), Violation of the Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Moe Popal and Emmanuel Dinglas (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Ameriprise Auto & Home Insurance Agency, Inc. and/or IDS Property Casualty Insurance Company (“Defendant”). Plaintiff Popal was employed by Defendant as a Claim Representative from June of 2017 to July of 2019 and was classified as a salaried employee exempt from receiving overtime wages and the legally required meal and rest periods. Plaintiff Dinglas was employed by Defendant as a Claim Representative from August of 2018 to May of 2019 and was classified as a salaried employee exempt from receiving overtime wages and the legally required meal and rest periods. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for all of the time they worked, including overtime worked. Plaintiffs further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code § 226(a). Additionally, Plaintiffs contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201,

202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Respectfully,

*/s/Nicholas J. De Blouw*

Nicholas J. De Blouw, Esq.

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7  
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10 MOE POPAL and EMMANUEL  
11 DINGLAS, individuals, on behalf of  
themselves and on behalf of all persons  
12 similarly situated,

13 Plaintiffs,

14 vs.

15 AMERIPRISE AUTO & HOME  
16 INSURANCE AGENCY, INC., a  
Corporation; IDS PROPERTY  
17 CASUALTY INSURANCE  
COMPANY, a Corporation; and DOES  
18 1 through 50, inclusive,

19 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Moe Popal and Emmanuel Dinglas ("PLAINTIFFS"), individuals, on behalf  
2 of themselves and all other similarly situated current and former employees, allege on  
3 information and belief, except their own acts and knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Ameriprise Auto & Home Insurance Company is a corporation that  
7 at all relevant times mentioned herein conducted and continues to conduct substantial business  
8 in the state of California.

9 2. Defendant IDS Property Casualty Insurance Company is a corporation that at all  
10 relevant times mentioned herein conducted and continues to conduct substantial business in the  
11 state of California.

12 3. Defendants Ameriprise Auto & Home Insurance Company and IDS Property  
13 Casualty Insurance Company are the joint employers of PLAINTIFF as evidenced by  
14 paychecks and by the company PLAINTIFF performs work for respectively, and are therefore  
15 jointly responsible as employers for the conduct alleged herein, and are therefore collectively  
16 referred to herein as "DEFENDANT."

17 4. DEFENDANT provides property and casualty insurance brokerage services. The  
18 company offers home and auto insurance, as well as long term care insurance and disability  
19 income insurance. The company was formerly known as Wisconsin Employers Casualty  
20 Company and changed its name in 1986. IDS Property Casualty Insurance Company operates  
21 as a subsidiary of Ameriprise Financial Inc.

22 5. The employees employed in positions with DEFENDANT with the titles of  
23 "Property Claim Representative," "Claims Representative," "Claims Field Representative"  
24 and/or "Field Property Adjuster" (hereinafter collectively the "Claims Representatives") all  
25 performed the same primary job duty which was to provide day-to-day routine clerical work in  
26 the handling and processing of insurance claims on the production side of DEFENDANT's  
27 business.

28 6. Plaintiff Popal was employed by DEFENDANT in California as a Claims



1 Representative from June of 2017 to July 25, 2019. At all times during his employment with  
2 DEFENDANT as a Claims Representative, Plaintiff Popal was classified as a salaried employee  
3 exempt from overtime pay and the legally required meal and rest breaks.

4 7. Plaintiff Dinglas was employed by DEFENDANT in California as a Claims  
5 Representative from August of 2018 to May of 2019. At all times during his employment with  
6 DEFENDANT as a Claims Representative, Plaintiff Dinglas was classified as a salaried  
7 employee exempt from overtime pay and the legally required meal and rest breaks.

8 8. To successfully compete against the other insurance service providers,  
9 DEFENDANT substantially reduces its labor costs by placing the labor burden on a smaller  
10 number of employees that DEFENDANT classifies as exempt from overtime wages. The goal  
11 of overtime laws includes expanding employment throughout the workforce by putting financial  
12 pressure on the employer and nurturing a stout job market, as well as the important public policy  
13 goal of protecting employees in a relatively weak bargaining position against the unfair scheme  
14 of uncompensated overtime work. An employer's obligation to pay its employees wages is  
15 more than a matter of private concern between the parties. That obligation is founded on a  
16 compelling public policy judgment that employees are entitled to work a livable number of  
17 hours at a livable wage. In addition, statutes and regulations that compel employers to pay  
18 overtime relate to fundamental issues of social welfare worthy of protection. The requirement  
19 to pay overtime wages extends beyond the benefits individual workers receive because overtime  
20 wages discourage employers from concentrating work in a few overburdened hands and  
21 encourage employers to instead hire additional employees. Especially in today's economic  
22 climate, the importance of spreading available work to reduce unemployment cannot be  
23 overestimated.

24 9. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
25 class, defined as all persons who are or previously were employed by Defendant Ameriprise  
26 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
27 in California as Claims Representatives and were classified as exempt from overtime wages (the  
28 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years

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

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

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

21  
22 **THE CONDUCT**

23 12. The work schedule for PLAINTIFFS and other CALIFORNIA CLASS  
24 Members is set by DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS  
25 Members work from time to time in excess of eight (8) hours in a workday and/or more than  
26 forty (40) hours in any given workweek.

27 13. PLAINTIFFS and the other CALIFORNIA CLASS Members are not provided  
28 with overtime compensation and other benefits required by law as a result of being classified

1 as "exempt" by DEFENDANT.

2 14. As a matter of company policy, practice, and procedure, DEFENDANT has  
3 uniformly, unlawfully, unfairly and/or deceptively classified every Claims Representative as  
4 exempt from overtime pay and other related benefits, fails to pay the required overtime  
5 compensation and otherwise fails to comply with all applicable labor laws with respect to  
6 these CMs.

7 15. As part of their business, DEFENDANT employs a fleet of Claims  
8 Representatives. PLAINTIFFS, as a Claims Representative, is engaged in the core, day-to-  
9 day business activities of DEFENDANT. The Claims Representatives engage in the finite  
10 set of non-exempt clerical tasks all in strict compliance with established specific procedures  
11 and protocols which governed and controlled every aspect of the work performed by  
12 PLAINTIFFS and other Claims Representatives. These standardized procedures mirror the  
13 realities of the workplace evidencing a uniformity of the highly skilled clerical work  
14 performed by PLAINTIFFS and other Claims Representatives and negate any exercise of  
15 independent judgment and discretion as to any matter of significance and negate any role in  
16 the participation of formulating DEFENDANT's business policies.

17 16. To perform their finite set of tasks, the Claims Representatives do not engage  
18 in a supervisory role given the constraints placed upon them by company policy. Claims  
19 Representatives do not determine what work is to be done by other employees or in what  
20 time frame. Furthermore, the Claims Representatives also do not have a distinct role in  
21 training other employees or determining what training they are to receive. Lastly,  
22 PLAINTIFFS and other Claims Representatives do not have the authority to hire, fire, or  
23 promote employees, determine their pay rates or benefits, or give raises as they are unable to  
24 make employment-related, personnel decisions. Consequently, PLAINTIFFS and the other  
25 Claims Representatives do not have the authority to decide whether or not an employee  
26 should be disciplined for an infraction. Disciplinary decisions are made by the human  
27 resources department or dictated by company policies. Overall, PLAINTIFFS and other  
28 Claims Representatives recommendations are given little, if any, weight on all the above

1 issues. As a result, PLAINTIFFS and the other Claims Representatives are engaged in a  
2 type of work that requires no exercise of independent judgment or discretion as to any matter  
3 of significance.

4 17. The finite set of tasks required of the Claims Representatives as defined by  
5 DEFENDANT are executed by the Claims Representatives through the performance of non-  
6 exempt labor within a defined manual skill set.

7 18. Although PLAINTIFFS and the other Claims Representatives spend the vast  
8 majority of their time performing these non-exempt tasks, DEFENDANT instituted a blanket  
9 classification policy, practice and procedure by which all of these Claims Representatives are  
10 classified as exempt from overtime compensation. By reason of this uniform exemption  
11 practice, policy and procedure applicable to PLAINTIFFS and the other Claims Representatives  
12 who perform these non-exempt tasks, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
14 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which  
15 fails to properly classify PLAINTIFFS and the other Claims Representatives and thereby fails  
16 to pay them overtime wages for documented overtime worked. The proper classification of  
17 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional  
18 disregard of the obligation to meet this burden, DEFENDANT fails to pay all required overtime  
19 compensation for work performed by the members of the CALIFORNIA CLASS and violates  
20 the California Labor Code and regulations promulgated thereunder as herein alleged. In  
21 addition, DEFENDANT fails to provide the legally required off-duty meal and rest breaks to  
22 PLAINTIFFS and the other CALIFORNIA CLASS Members as required by the applicable  
23 Wage Order and Labor Code. DEFENDANT does not have a policy or practice which provides  
24 meal and rest breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members. As a  
25 result, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS  
26 Members with legally required meal and rest breaks is evidenced by DEFENDANT's business  
27 records which contains no record of these breaks.

28 19. DEFENDANT, as a matter of law, has the burden of proving that (a) employees

1 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable  
2 laws.

3 20. During their employment with DEFENDANT, PLAINTIFFS and the other  
4 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are  
5 nevertheless classified by DEFENDANT as exempt from overtime pay and work more than  
6 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

7 21. Claims Representatives are classified as exempt from California overtime and  
8 related laws by DEFENDANT, however, these employees do not have managerial duties or  
9 authority. Claims Representatives in performing these ongoing day-to-day, non-exempt and  
10 non-managerial tasks have no role in supervising employees and have no authority to make  
11 employment-related decisions relating to DEFENDANT's employees. Furthermore, the Claims  
12 Representatives are tightly controlled by company policy and by their supervisors, do not  
13 exercise discretion or independent judgment as to matters of significance, and their tasks are not  
14 directly related to DEFENDANT's management policies or general business operations.

15 22. PLAINTIFFS and all members of the CALIFORNIA CLASS are uniformly  
16 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,  
17 DEFENDANT has failed to take the proper steps to determine whether PLAINTIFFS, and the  
18 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial  
19 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
20 exempt from applicable California labor laws. Since DEFENDANT affirmatively and willfully  
21 misclassified PLAINTIFFS and the members of the CALIFORNIA CLASS in compliance with  
22 California labor laws, DEFENDANT's practices violated and continue to violate California law.  
23 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFFS  
24 and each member of the CALIFORNIA CLASS that they are exempt from overtime pay when  
25 DEFENDANT knew or should have known that this statement is false and not based on known  
26 facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result  
27 of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT  
28 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors

1 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them in  
2 accordance with California law.

3 23. When PLAINTIFFS and other CALIFORNIA CLASS Members work overtime,  
4 DEFENDANT also failed to provide PLAINTIFFS and the other CALIFORNIA CLASS  
5 Members with a wage statement in writing that accurately sets forth gross wages earned, all  
6 applicable hourly rates in effect during the pay period and the corresponding amount of time  
7 worked at each hourly rate by the PLAINTIFFS and the other CALIFORNIA CLASS Members.  
8 This conduct violated California Labor Code § 226. The pay stub also does not accurately  
9 display anywhere PLAINTIFFS and the other CALIFORNIA CLASS Members' overtime work  
10 and applicable rates of overtime pay for the pay period.

11 24. By reason of this uniform conduct applicable to PLAINTIFFS and all the  
12 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
14 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly  
15 classify PLAINTIFFS and the CALIFORNIA CLASS of CMs as non-exempt. The proper  
16 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's  
17 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly  
18 calculate and/or pay all required overtime compensation for work performed by the members  
19 of the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor  
20 Code and the regulations promulgated thereunder as herein alleged.

21 25. Specifically as to PLAINTIFFS, they perform the finite set of tasks of processing  
22 entry level and intermediate level casualty claims with insureds, claimants, attorneys and  
23 medical professionals, opening and maintaining appropriate reserves throughout the life of the  
24 claim, managing the file through securing necessary documents via phone or written  
25 correspondence, processing of authorizations, making phone calls to employers, clients and  
26 medical providers, opening and processing mail, and processing the acceptance and denial of  
27 insurance claims in accordance with the policies, protocols and operations established by  
28 DEFENDANT. All of these tasks were performed in strict compliance with established

1 specific procedures and protocols which governs and controls every aspect of the work  
2 performed by PLAINTIFFS. PLAINTIFFS use the skill, training, and expertise acquired on the  
3 job to perform their job tasks, and perform these job tasks in compliance with the directives  
4 given to them by other employees of DEFENDANT. During the CALIFORNIA CLASS  
5 PERIOD, PLAINTIFFS as Claims Representatives, have been classified by DEFENDANT as  
6 exempt from overtime pay and work in excess of eight (8) hours in a workday and/or more than  
7 forty (40) hours in a workweek, but as a result of DEFENDANT's misclassification of  
8 PLAINTIFFS as exempt from the applicable California Labor Code provisions, PLAINTIFFS  
9 are not compensated by DEFENDANT for their overtime worked at the applicable overtime  
10 rate. DEFENDANT does not have a policy or practice which provides meal and rest breaks to  
11 PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and rest breaks.  
12 As a consequence of the foregoing, PLAINTIFFS are not provided with accurate and itemized  
13 wage statements showing the gross wages earned, the net wages earned, all applicable hourly  
14 rates in effect during the pay period, including overtime hourly rates, and the corresponding  
15 number of hours worked at each hourly rate, by DEFENDANT during the CALIFORNIA  
16 CLASS PERIOD in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has yet to pay  
17 PLAINTIFFS all of their wages due to them and DEFENDANT has failed to pay any penalty  
18 wages owed to them under California Labor Code Section 203.

## 19 20 **JURISDICTION AND VENUE**

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

25 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
26 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and  
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
28 in this County and/or conducts substantial business in this County, and (ii) committed the

1 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS

2 **THE CALIFORNIA CLASS**

3 28. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
4 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
5 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California  
6 Class, defined as all persons who are or previously were employed by Defendants Ameriprise  
7 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
8 in California as Claims Representatives and were classified as exempt from overtime wages (the  
9 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years  
10 prior to the filing of this complaint and ending on the date as determined by the Court (the  
11 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
12 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

16 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
18 Requirements, and the applicable provisions of California law, intentionally, knowingly, and  
19 wilfully, engages in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively  
20 instituted a practice to ensure that the employees employed in a CM position are not properly  
21 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

22 31. DEFENDANT has the burden of proof to make sure that each and every employee  
23 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*  
24 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in  
25 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice that  
26 misclassifies the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy  
27 and practice in place at all times during the CALIFORNIA CLASS PERIOD and currently in  
28 place is to systematically classify each and every CALIFORNIA CLASS Member as exempt



1 from the requirements of the California Labor Code §§ 510, *et seq.* This common business  
2 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on  
3 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code  
4 §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this  
5 claim.

6 32. At no time during PLAINTIFFS employment with DEFENDANT has any Claims  
7 Representative been reclassified as non-exempt from the applicable requirements of California  
8 Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly,  
9 and systematically classified as exempt upon being hired.

10 33. Any individual declarations of any employees offered at this time purporting to  
11 indicate that one or more Claims Representatives may have been properly classified is of no  
12 force or affect absent contemporaneous evidence that DEFENDANT's uniform system did not  
13 misclassify PLAINTIFFS and the other CALIFORNIA CLASS Members as exempt pursuant  
14 to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,  
15 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the  
16 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,  
17 PLAINTIFFS and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT  
18 to provide restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to  
19 retribute these funds to PLAINTIFFS and the CALIFORNIA CLASS Members according to  
20 proof.

21 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
22 CLASS Members is impracticable.

23 35. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
24 California law by:

- 25 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
26 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively  
27 having in place company policies, practices and procedures that uniformly  
28 misclassified PLAINTIFFS and the members of the CALIFORNIA

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- CLASS as exempt;
- (b) Committing an act of unfair competition in violation of the UCL, by unlawfully, unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that accurately determines the amount of working time spent by PLAINTIFFS and the members of the CALIFORNIA CLASS performing non-exempt labor;
- (c) Committing an act of unfair competition in violation of the UCL, by having in place a company policy, practice and procedure that fails to reclassify as non-exempt those members of the CALIFORNIA CLASS whose actual tasks were comprised of non-exempt job functions;
- (d) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFFS and the members of the CALIFORNIA CLASS who are improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT; and,
- (e) Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

36. This 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, and declaratory 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 PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the

1 other members of the CALIFORNIA CLASS, were initially classified as  
2 exempt upon hiring based on the defined corporate policies and practices  
3 and labored under DEFENDANT's systematic procedure that fails to  
4 properly classify as non-exempt PLAINTIFFS and the members of the  
5 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a  
6 result of DEFENDANT's employment practices. PLAINTIFFS and the  
7 members of the CALIFORNIA CLASS were and are similarly or  
8 identically harmed by the same unlawful, deceptive, unfair and pervasive  
9 pattern of misconduct engaged in by DEFENDANT by deceptively  
10 advising all Claims Representatives that they were exempt from overtime  
11 wages based on the defined corporate policies and practices, and unfairly  
12 failing to pay overtime to these employees who were improperly classified  
13 as exempt; and,

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

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

24 (a) Without class certification and determination of declaratory, statutory and  
25 other legal questions within the class format, prosecution of separate  
26 actions by individual members of the CALIFORNIA CLASS will create  
27 the risk of:

28 1) Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA CLASS which would establish  
2 incompatible standards of conduct for the parties opposing the  
3 CALIFORNIA CLASS; and/or,

4 2) Adjudication with respect to individual members of the  
5 CALIFORNIA CLASS which would as a practical matter be  
6 dispositive of interests of the other members not party to the  
7 adjudication or substantially impair or impede their ability to  
8 protect their interests.

9 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
10 act on grounds generally applicable to the CALIFORNIA CLASS, making  
11 appropriate class-wide relief with respect to the CALIFORNIA CLASS  
12 as a whole in that DEFENDANT uniformly classified and treated the  
13 Claims Representatives as exempt and, thereafter, uniformly failed to take  
14 proper steps to determine whether the Claims Representatives were  
15 properly classified as exempt, and thereby denied these employees  
16 overtime wages as required by law;

17 1) With respect to the First Cause of Action, the final relief on behalf  
18 of the CALIFORNIA CLASS sought does not relate exclusively to  
19 restitution because through this claim the PLAINTIFFS seek  
20 declaratory relief holding that DEFENDANT's policies and  
21 practices constitute unfair competition, along with incidental  
22 equitable relief as may be necessary to remedy the conduct declared  
23 to constitute unfair competition;

24 (c) Common questions of law and fact exist as to the members of the  
25 CALIFORNIA CLASS, with respect to the practices and violations of  
26 California law as listed above, and predominate over any question  
27 affecting only individual CALIFORNIA CLASS Members, and a Class  
28 Action is superior to other available methods for the fair and efficient

1 adjudication of the controversy, including consideration of:

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

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

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

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

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

27 4) A Class Action is superior to other available methods for the fair  
28 and efficient adjudication of this litigation because class treatment

1 will obviate the need for unduly and unnecessary duplicative  
2 litigation that is likely to result in the absence of certification of  
3 this Action pursuant to Cal. Code of Civ. Proc. § 382.

4 38. This Court should permit this Action to be maintained as a Class Action pursuant  
5 to Cal. Code of Civ. Proc. § 382, because:

- 6 (a) The questions of law and fact common to the CALIFORNIA CLASS  
7 predominate over any question affecting only individual CALIFORNIA  
8 CLASS Members because DEFENDANT's employment practices were  
9 uniform and systematically applied with respect to the CALIFORNIA  
10 CLASS;
- 11 (b) A Class Action is superior to any other available method for the fair and  
12 efficient adjudication of the claims of the members of the CALIFORNIA  
13 CLASS because in the context of employment litigation a substantial  
14 number of individual CALIFORNIA CLASS Members will avoid  
15 asserting their rights individually out of fear of retaliation or adverse  
16 impact on their employment;
- 17 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
18 impractical to bring all members of the CALIFORNIA CLASS before the  
19 Court;
- 20 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be  
21 able to obtain effective and economic legal redress unless the action is  
22 maintained as a Class Action;
- 23 (e) There is a community of interest in obtaining appropriate legal and  
24 equitable relief for the acts of unfair competition, statutory violations and  
25 other improprieties, and in obtaining adequate compensation for the  
26 injuries which DEFENDANT's actions have inflicted upon the  
27 CALIFORNIA CLASS;
- 28 (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of the  
2 CALIFORNIA CLASS for the injuries sustained;

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

6 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
7 the business records of DEFENDANT. The CALIFORNIA CLASS  
8 consists of all DEFENDANT's Claims Representatives who were  
9 classified as exempt and who were employed in California during the  
10 CALIFORNIA CLASS PERIOD; and,

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 40. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, and Sixth Causes  
22 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
23 CLASS who were employed in California (the "CALIFORNIA LABOR SUB-CLASS") at any  
24 time during the period beginning on the date three (3) years prior to the filing of this Complaint  
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS  
26 PERIOD") pursuant to California Code of Civil Procedure § 382. The amount in controversy  
27 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million  
28

1 dollars (\$5,000,000.00).

2 41. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
3 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare  
4 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and  
5 systematically misclassified the PLAINTIFFS and the other members of the CALIFORNIA  
6 CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and  
7 other labor laws based on DEFENDANT's comprehensive policies and procedures in order to  
8 avoid the payment of overtime wages by misclassifying their positions as exempt from overtime  
9 wages and other labor laws. To the extent equitable tolling operates to toll claims by the  
10 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR  
11 SUB-CLASS PERIOD should be adjusted accordingly.

12 42. DEFENDANT maintains records from which the Court can ascertain and identify  
13 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS  
14 Members have been systematically, intentionally and uniformly misclassified as exempt as a  
15 matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFFS will seek  
16 leave to amend the Complaint to include these additional job titles when they have been  
17 identified.

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

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

- 22 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation  
23 to members of the CALIFORNIA LABOR SUB-CLASS in violation of  
24 the California Labor Code and California regulations and the applicable  
25 California Wage Order;
- 26 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
27 non-exempt employees entitled to overtime compensation for overtime  
28 worked under the overtime pay requirements of California law;



- 1 (c) Whether DEFENDANT's policy and practice of classifying the  
2 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime  
3 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS  
4 Members overtime violate applicable provisions of California law;
- 5 (d) Whether DEFENDANT unlawfully fails to keep and furnish  
6 CALIFORNIA LABOR SUB-CLASS Members with accurate records of  
7 overtime worked; and,
- 8 (e) The proper measure of damages and penalties owed to the members of the  
9 CALIFORNIA LABOR SUB-CLASS.

10 45. DEFENDANT, as a matter of corporate policy, practice and procedure,  
11 erroneously classifies all Claims Representatives as exempt from overtime wages and other  
12 labor laws. All Claims Representatives, including PLAINTIFFS, perform the same finite set  
13 of tasks and are paid by DEFENDANT according to uniform and systematic company  
14 procedures, which, as alleged herein above, fails to correctly pay overtime compensation. This  
15 business practice has been uniformly applied to each and every member of the CALIFORNIA  
16 LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a  
17 class-wide basis.

18 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
19 under California law by:

- 20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby  
21 failing to pay PLAINTIFFS and the members of the CALIFORNIA  
22 LABOR SUB-CLASS the correct overtime pay for a workday longer than  
23 eight (8) hours and/or a workweek longer than forty (40) hours for which  
24 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 25 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and  
26 the members of the CALIFORNIA LABOR SUB-CLASS who are  
27 improperly classified as exempt with an accurate itemized statement in  
28 writing showing the gross wages earned, the net wages earned, all

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applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the employee when these employees worked overtime from time to time in a pay period;

- (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks; and,
- (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

47. This 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 LABOR SUB-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, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were improperly classified as exempt and denied overtime pay as a result of DEFENDANT’s systematic classification practices. PLAINTIFFS and all the other members of the CALIFORNIA LABOR

1 SUB-CLASS sustained economic injuries arising from DEFENDANT's  
2 violations of the laws of California; and,

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

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

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

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

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

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

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
2 DEFENDANT uniformly classified and treated the Claims  
3 Representatives as exempt and, thereafter, uniformly failed to take proper  
4 steps to determine whether the Claims Representatives were properly  
5 classified as exempt, and thereby denied these employees overtime wages  
6 as required by law;

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

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

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

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

27 B. Adjudications with respect to individual members of the  
28 CALIFORNIA LABOR SUB-CLASS would as a practical

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

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

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

16 49. This Court should permit this Action to be maintained as a Class Action pursuant  
17 to Cal. Code of Civ. Proc. § 382, because:

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

21 (b) A Class Action is superior to any other available method for the fair and  
22 efficient adjudication of the claims of the members of the CALIFORNIA  
23 LABOR SUB-CLASS because in the context of employment litigation a  
24 substantial number of individual CALIFORNIA LABOR SUB-CLASS  
25 Members will avoid asserting their rights individually out of fear of  
26 retaliation or adverse impact on their employment;

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so  
28 numerous that it is impractical to bring all members of the CALIFORNIA

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LABOR SUB-CLASS before the Court;

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

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3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

6 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

7 50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
9 Complaint.

10 51. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
11 Code § 17021.

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

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

20 California Business & Professions Code § 17203.

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

28 54. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair

1 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous  
2 or substantially injurious to employees, and are without valid justification or utility for which  
3 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the  
4 California Business & Professions Code, including restitution of wages wrongfully withheld.

5 55. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
6 fraudulent in that DEFENDANT's uniform policy and practice is to represent to PLAINTIFFS  
7 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact  
8 these representations are false and likely to deceive, for which this Court should issue injunctive  
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
10 wrongfully withheld.

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

15 57. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
16 deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide  
17 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

23 59. PLAINTIFFS further demand on behalf of themselves and on behalf of each  
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty  
25 paid rest period was not timely provided as required by law.

26 60. By and through the unlawful and unfair business practices described herein,  
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
28 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and



1 benefits guaranteed by law and contract, all to the detriment of these employees and to the  
2 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors  
3 who comply with the law.

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

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

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

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

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**SECOND CAUSE OF ACTION**

4

**For Failure To Pay Overtime Compensation**

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

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**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**

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**Defendants)**

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

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66. Cal. Lab. Code § 510 states in relevant part:

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Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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67. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

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68. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

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69. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

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70. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

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71. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard

1 conditions of labor fixed by the commission shall be the maximum hours of work and the  
2 standard conditions of labor for employees. The employment of any employee for longer hours  
3 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

4 72. DEFENDANT has intentionally and uniformly designated certain employees as  
5 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic  
6 expectations and actual overall requirements of the job, including PLAINTIFFS and the other  
7 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-  
8 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid  
9 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial  
10 Welfare Commission requirements.

11 73. For an employee to be exempt as a bona fide "executive," all the following criteria  
12 must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee's primary duty must be management of the enterprise, or of a  
14 customarily recognized department or subdivision; and,  
15 (b) The employee must customarily and regularly direct the work of at least two (2)  
16 or more other employees; and,  
17 (c) The employee must have the authority to hire and fire, or to command particularly  
18 serious attention to his or her recommendations on such actions affecting other  
19 employees; and,  
20 (d) The employee must customarily and regularly exercise discretion and independent  
21 judgment; and,  
22 (e) The employee must be primarily engaged in duties which meet the test of  
23 exemption.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they  
25 all fail to meet the requirements of being an "executive" within the meaning of the applicable  
26 Wage Order.

27 74. For an employee to be exempt as a bona fide "administrator," all of the following  
28 criteria must be met and DEFENDANT has the burden of proving that:

- 1 (a) The employee must perform office or non-manual work directly related to  
2 management policies or general business operation of the employer; and,  
3 (b) The employee must customarily and regularly exercise discretion and independent  
4 judgment; and,  
5 (c) The employee must regularly and directly assist a proprietor or an exempt  
6 administrator; or,  
7 (d) The employee must perform, under only general supervision, work requiring  
8 special training, experience, or knowledge; or,  
9 (e) The employee must execute special assignments and tasks under only general  
10 supervision; and,  
11 (f) The employee must be primarily engaged in duties which meet the test of  
12 exemption.

13 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
14 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
15 Order.

16 75. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
17 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
18 with to place an employee in the "professional" exempt category. For an employee to be exempt  
19 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
20 burden of proving that:

- 21 (a) The employee is primarily engaged in an occupation commonly recognized as a  
22 learned or artistic profession. For the purposes of this subsection, "learned or  
23 artistic profession" means an employee who is primarily engaged in the  
24 performance of:  
25 1) Work requiring knowledge of an advanced type in a field or science or  
26 learning customarily acquired by a prolonged course of specialized  
27 intellectual instruction and study, as distinguished from a general  
28 academic education and from an apprenticeship, and from training in the

1 performance of routine mental, manual, or physical processes, or work that  
2 is an essential part or necessarily incident to any of the above work; or,

3 2) Work that is original and creative in character in a recognized field of  
4 artistic endeavor, and the result of which depends primarily on the  
5 invention, imagination or talent of the employee or work that is an  
6 essential part of or incident to any of the above work; and,

7 3) Whose work is predominately intellectual and varied in character (as  
8 opposed to routine mental, manual, mechanical, or physical work) and is  
9 of such character cannot be standardized in relation to a given period of  
10 time.

11 (b) The employee must customarily and regularly exercise discretion and independent  
12 judgment; and,

13 (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
14 state minimum wage for full-time employment.

15 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they  
16 all fail to meet the requirements of being a "professional" within the meaning of the applicable  
17 Wage Order.

18 76. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
19 CLASS, do not fit the definition of an exempt executive, administrative, or professional  
20 employee because:

21 (a) They did not work as executives or administrators; and,

22 (b) The professional exemption does not apply to the PLAINTIFFS, nor to the other  
23 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet  
24 all the applicable requirements to work under the professional exemption for the  
25 reasons set forth above in this Complaint.

26 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS, and  
27 the other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours  
28 in a workday and/or more than forty (40) hours in a workweek.

1           78.    DEFENDANT fails to pay PLAINTIFFS, and the other members of the  
2 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in  
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and  
4 1198, even though PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
5 CLASS, are required to work, and do in fact work, overtime.

6           79.    By virtue of DEFENDANT's unlawful failure to pay additional compensation  
7 to PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their  
8 overtime work, PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
9 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are  
10 presently unknown to them and which will be ascertained according to proof at trial.

11           80.    DEFENDANT knew or should have known that PLAINTIFFS, and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and  
13 DEFENDANT systematically elected, either through intentional malfeasance or gross  
14 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate policy,  
15 practice and procedure.

16           81.    Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
17 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,  
18 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
19 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined  
20 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their  
21 employment, these employees would also be entitled to waiting time penalties under Cal. Lab.  
22 Code § 203, which penalties are sought herein. Further, PLAINTIFFS, and the other members  
23 of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

24           82.    In performing the acts and practices herein alleged in violation of labor laws and  
25 refusing to provide the requisite overtime compensation, DEFENDANT acted and continues  
26 to act intentionally, oppressively, and maliciously toward PLAINTIFFS, and toward the other  
27 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of  
28 their legal rights, or the consequences to them, and with the despicable intent of depriving them

1 of their property and legal rights and otherwise causing them injury in order to increase  
2 corporate profits at the expense of PLAINTIFFS and the members of the CALIFORNIA  
3 LABOR SUB-CLASS.

4  
5 **THIRD CAUSE OF ACTION**

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

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

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
9 **Defendants)**

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

13 84. During the CALIFORNIA CLASS PERIOD from time to time, DEFENDANT  
14 fails to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
15 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
16 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
17 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their  
18 duties for the legally required off-duty meal periods. As a result of their rigorous work  
19 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are from  
20 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
21 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
22 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
23 by DEFENDANT's business records. As a result, PLAINTIFFS and other members of the  
24 CALIFORNIA LABOR SUB-CLASS therefore forfeit meal breaks without additional  
25 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

26 85. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-  
28 CLASS Members who are not provided a meal period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each  
2 workday that a meal period is not provided.

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

7  
8 **FOURTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
12 **Defendants)**

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

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

27 89. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-



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

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

8  
9 **FIFTH CAUSE OF ACTION**

10 **For Failure to Provide Accurate Itemized Statements**

11 **[Cal. Lab. Code § 226]**

12 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
13 **Defendants)**

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

17 92. Cal. Labor Code § 226 provides that an employer must furnish employees with  
18 an "accurate itemized" statement in writing showing:

19 (1) gross wages earned,

20 (2) total hours worked by the employee, except for any employee whose compensation  
21 is solely based on a salary and who is exempt from payment of overtime under  
22 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
23 Commission,

24 (3) the number of piecerate units earned and any applicable piece rate if the employee  
25 is paid on a piece-rate basis,

26 (4) all deductions, provided that all deductions made on written orders of the employee  
27 may be aggregated and shown as one item,

28 (5) net wages earned,

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

9 93. In the pay periods PLAINTIFFS and other CALIFORNIA CLASS Members work  
10 overtime, DEFENDANT violated Labor Code § 226, in that DEFENDANT fails to provide an  
11 accurate wage statement in writing that properly and accurately itemizes the actual time worked  
12 by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS at the  
13 effective regular rates of pay and the effective overtime rates of pay.

14 94. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
15 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
16 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
17 true time worked and the amount of employment taxes which were not properly paid to state and  
18 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS, and  
19 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated  
20 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for  
21 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according  
22 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFFS and each  
23 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

24  
25 **SIXTH CAUSE OF ACTION**

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

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

28 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**

1 **Defendants)**

2 95. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior  
4 paragraphs of this Complaint.

5 96. Cal. Lab. Code § 200 provides that:

6 As used in this article:

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

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

11 97. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
12 an employee, the wages earned and unpaid at the time of discharge are due and payable  
13 immediately."

14 98. Cal. Lab. Code § 202 provides, in relevant part, that:

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

21 99. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR  
SUB-CLASS Members' employment contract.

22 100. Cal. Lab. Code § 203 provides:

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

26 101. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
27 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to  
28 these employees as required by law.

102. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,  
2 PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time  
3 of termination for all employees who terminated employment during the CALIFORNIA  
4 LABOR SUB-CLASS PERIOD, and demand an accounting and payment of all wages due, plus  
5 interest and statutory costs as allowed by law.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and  
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

- 11 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
12 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;  
13 B) An order requiring DEFENDANT to correctly calculate and pay all overtime  
14 wages and all sums unlawfully withheld from compensation due to PLAINTIFFS  
15 and the other members of the CALIFORNIA CLASS;  
16 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
17 for restitution of the sums incidental to DEFENDANT's violations due to the  
18 PLAINTIFFS and to the other members of the CALIFORNIA CLASS according  
19 to proof; and,  
20 D) An order temporarily, preliminarily, and permanently enjoining and restraining  
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
24 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action  
25 pursuant to California Code of Civil Procedure § 382;  
26 B) Compensatory damages, according to proof at trial, for overtime compensation  
27 due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD  
plus interest thereon at the statutory rate;

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
2 in which a violation occurs and one hundred dollars (\$100) per each member of  
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 D) The wages of all terminated employees from the CALIFORNIA LABOR  
7 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or  
8 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;  
9 and,
- 10 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
11 the applicable IWC Wage Order.
- 12 3. On all claims:
- 13 A) An award of interest, including prejudgment interest at the legal rate;  
14 B) Such other and further relief as the Court deems just and equitable; and,  
15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the  
16 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or  
17 §1194.

18 Dated: August 22, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

19  
20 By: \_\_\_\_\_  
21 Norman B. Blumenthal  
22 Attorneys for Plaintiffs  
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**DEMAND FOR A JURY TRIAL**

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

Dated: August 22, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiffs

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# EXHIBIT 2

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:  
1004

September 10, 2019  
CA1798

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency IDS Property Casualty Insurance Company  
Online Filing Certified Mail # 7019112000066523472  
3500 Packerland Drive  
De Pere, WI 54115

Amended Notice For LWDA, Case No. LWDA-CM-735194-19

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1198, Violation of Industrial Wage Order 7(A)(3), Violation of the Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Moe Popal and Emmanuel Dinglas (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Ameriprise Auto & Home Insurance Agency, Inc. and/or IDS Property Casualty Insurance Company (“Defendant”). Plaintiff Popal was employed by Defendant as a Claim Representative from June of 2017 to July of 2019 and was classified as a salaried employee exempt from receiving overtime wages and the legally required meal and rest periods. Plaintiff Dinglas was employed by Defendant as a Claim Representative from August of 2018 to May of 2019 and was classified as a salaried employee exempt from receiving overtime wages and the legally required meal and rest periods. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for all of the time they worked, including overtime worked. Plaintiffs further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code § 226(a). Additionally, Plaintiffs contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

Plaintiffs originally sent a PAGA Notice on August 22, 2019, which gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against



Defendant as authorized by California Labor Code section 2695, *et seq.* Specifically, the August 22, 2019 PAGA Notice incorrectly stated Defendant IDS Property Casualty Insurance Company's mailing address. This amended notice is intended to correct the mailing address of Defendant IDS Property Casualty Insurance Company's mailing address.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Respectfully,

*/s/Nicholas J. De Blouw*

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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5 Website: [www.bamlawca.com](http://www.bamlawca.com)

6 Attorneys for Plaintiffs

7  
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10 MOE POPAL and EMMANUEL  
11 DINGLAS, individuals, on behalf of  
12 themselves and on behalf of all persons  
similarly situated,

13 Plaintiffs,

14 vs.

15 AMERIPRISE AUTO & HOME  
16 INSURANCE AGENCY, INC., a  
Corporation; IDS PROPERTY  
17 CASUALTY INSURANCE  
COMPANY, a Corporation; and DOES  
18 1 through 50, inclusive,

19 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 OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
- 3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
- 6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Moe Popal and Emmanuel Dinglas ("PLAINTIFFS"), individuals, on behalf  
2 of themselves and all other similarly situated current and former employees, allege on  
3 information and belief, except their own acts and knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Ameriprise Auto & Home Insurance Company is a corporation that  
7 at all relevant times mentioned herein conducted and continues to conduct substantial business  
8 in the state of California.

9 2. Defendant IDS Property Casualty Insurance Company is a corporation that at all  
10 relevant times mentioned herein conducted and continues to conduct substantial business in the  
11 state of California.

12 3. Defendants Ameriprise Auto & Home Insurance Company and IDS Property  
13 Casualty Insurance Company are the joint employers of PLAINTIFF as evidenced by  
14 paychecks and by the company PLAINTIFF performs work for respectively, and are therefore  
15 jointly responsible as employers for the conduct alleged herein, and are therefore collectively  
16 referred to herein as "DEFENDANT."

17 4. DEFENDANT provides property and casualty insurance brokerage services. The  
18 company offers home and auto insurance, as well as long term care insurance and disability  
19 income insurance. The company was formerly known as Wisconsin Employers Casualty  
20 Company and changed its name in 1986. IDS Property Casualty Insurance Company operates  
21 as a subsidiary of Ameriprise Financial Inc.

22 5. The employees employed in positions with DEFENDANT with the titles of  
23 "Property Claim Representative," "Claims Representative," "Claims Field Representative"  
24 and/or "Field Property Adjuster" (hereinafter collectively the "Claims Representatives") all  
25 performed the same primary job duty which was to provide day-to-day routine clerical work in  
26 the handling and processing of insurance claims on the production side of DEFENDANT's  
27 business.

28 6. Plaintiff Popal was employed by DEFENDANT in California as a Claims

1 Representative from June of 2017 to July 25, 2019. At all times during his employment with  
2 DEFENDANT as a Claims Representative, Plaintiff Popal was classified as a salaried employee  
3 exempt from overtime pay and the legally required meal and rest breaks.

4 7. Plaintiff Dinglas was employed by DEFENDANT in California as a Claims  
5 Representative from August of 2018 to May of 2019. At all times during his employment with  
6 DEFENDANT as a Claims Representative, Plaintiff Dinglas was classified as a salaried  
7 employee exempt from overtime pay and the legally required meal and rest breaks.

8 8. To successfully compete against the other insurance service providers,  
9 DEFENDANT substantially reduces its labor costs by placing the labor burden on a smaller  
10 number of employees that DEFENDANT classifies as exempt from overtime wages. The goal  
11 of overtime laws includes expanding employment throughout the workforce by putting financial  
12 pressure on the employer and nurturing a stout job market, as well as the important public policy  
13 goal of protecting employees in a relatively weak bargaining position against the unfair scheme  
14 of uncompensated overtime work. An employer's obligation to pay its employees wages is  
15 more than a matter of private concern between the parties. That obligation is founded on a  
16 compelling public policy judgment that employees are entitled to work a livable number of  
17 hours at a livable wage. In addition, statutes and regulations that compel employers to pay  
18 overtime relate to fundamental issues of social welfare worthy of protection. The requirement  
19 to pay overtime wages extends beyond the benefits individual workers receive because overtime  
20 wages discourage employers from concentrating work in a few overburdened hands and  
21 encourage employers to instead hire additional employees. Especially in today's economic  
22 climate, the importance of spreading available work to reduce unemployment cannot be  
23 overestimated.

24 9. PLAINTIFFS bring this Class Action on behalf of themselves and a California  
25 class, defined as all persons who are or previously were employed by Defendant Ameriprise  
26 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
27 in California as Claims Representatives and were classified as exempt from overtime wages (the  
28 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years

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

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

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

21  
22 **THE CONDUCT**

23 12. The work schedule for PLAINTIFFS and other CALIFORNIA CLASS  
24 Members is set by DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS  
25 Members work from time to time in excess of eight (8) hours in a workday and/or more than  
26 forty (40) hours in any given workweek.

27 13. PLAINTIFFS and the other CALIFORNIA CLASS Members are not provided  
28 with overtime compensation and other benefits required by law as a result of being classified

1 as "exempt" by DEFENDANT.

2 14. As a matter of company policy, practice, and procedure, DEFENDANT has  
3 uniformly, unlawfully, unfairly and/or deceptively classified every Claims Representative as  
4 exempt from overtime pay and other related benefits, fails to pay the required overtime  
5 compensation and otherwise fails to comply with all applicable labor laws with respect to  
6 these CMs.

7 15. As part of their business, DEFENDANT employs a fleet of Claims  
8 Representatives. PLAINTIFFS, as a Claims Representative, is engaged in the core, day-to-  
9 day business activities of DEFENDANT. The Claims Representatives engage in the finite  
10 set of non-exempt clerical tasks all in strict compliance with established specific procedures  
11 and protocols which governed and controlled every aspect of the work performed by  
12 PLAINTIFFS and other Claims Representatives. These standardized procedures mirror the  
13 realities of the workplace evidencing a uniformity of the highly skilled clerical work  
14 performed by PLAINTIFFS and other Claims Representatives and negate any exercise of  
15 independent judgment and discretion as to any matter of significance and negate any role in  
16 the participation of formulating DEFENDANT's business policies.

17 16. To perform their finite set of tasks, the Claims Representatives do not engage  
18 in a supervisory role given the constraints placed upon them by company policy. Claims  
19 Representatives do not determine what work is to be done by other employees or in what  
20 time frame. Furthermore, the Claims Representatives also do not have a distinct role in  
21 training other employees or determining what training they are to receive. Lastly,  
22 PLAINTIFFS and other Claims Representatives do not have the authority to hire, fire, or  
23 promote employees, determine their pay rates or benefits, or give raises as they are unable to  
24 make employment-related, personnel decisions. Consequently, PLAINTIFFS and the other  
25 Claims Representatives do not have the authority to decide whether or not an employee  
26 should be disciplined for an infraction. Disciplinary decisions are made by the human  
27 resources department or dictated by company policies. Overall, PLAINTIFFS and other  
28 Claims Representatives recommendations are given little, if any, weight on all the above

1 issues. As a result, PLAINTIFFS and the other Claims Representatives are engaged in a  
2 type of work that requires no exercise of independent judgment or discretion as to any matter  
3 of significance.

4 17. The finite set of tasks required of the Claims Representatives as defined by  
5 DEFENDANT are executed by the Claims Representatives through the performance of non-  
6 exempt labor within a defined manual skill set.

7 18. Although PLAINTIFFS and the other Claims Representatives spend the vast  
8 majority of their time performing these non-exempt tasks, DEFENDANT instituted a blanket  
9 classification policy, practice and procedure by which all of these Claims Representatives are  
10 classified as exempt from overtime compensation. By reason of this uniform exemption  
11 practice, policy and procedure applicable to PLAINTIFFS and the other Claims Representatives  
12 who perform these non-exempt tasks, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
14 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which  
15 fails to properly classify PLAINTIFFS and the other Claims Representatives and thereby fails  
16 to pay them overtime wages for documented overtime worked. The proper classification of  
17 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional  
18 disregard of the obligation to meet this burden, DEFENDANT fails to pay all required overtime  
19 compensation for work performed by the members of the CALIFORNIA CLASS and violates  
20 the California Labor Code and regulations promulgated thereunder as herein alleged. In  
21 addition, DEFENDANT fails to provide the legally required off-duty meal and rest breaks to  
22 PLAINTIFFS and the other CALIFORNIA CLASS Members as required by the applicable  
23 Wage Order and Labor Code. DEFENDANT does not have a policy or practice which provides  
24 meal and rest breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members. As a  
25 result, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS  
26 Members with legally required meal and rest breaks is evidenced by DEFENDANT's business  
27 records which contains no record of these breaks.

28 19. DEFENDANT, as a matter of law, has the burden of proving that (a) employees

1 are properly classified as exempt and that (b) DEFENDANT otherwise complies with applicable  
2 laws.

3 20. During their employment with DEFENDANT, PLAINTIFFS and the other  
4 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are  
5 nevertheless classified by DEFENDANT as exempt from overtime pay and work more than  
6 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

7 21. Claims Representatives are classified as exempt from California overtime and  
8 related laws by DEFENDANT, however, these employees do not have managerial duties or  
9 authority. Claims Representatives in performing these ongoing day-to-day, non-exempt and  
10 non-managerial tasks have no role in supervising employees and have no authority to make  
11 employment-related decisions relating to DEFENDANT's employees. Furthermore, the Claims  
12 Representatives are tightly controlled by company policy and by their supervisors, do not  
13 exercise discretion or independent judgment as to matters of significance, and their tasks are not  
14 directly related to DEFENDANT's management policies or general business operations.

15 22. PLAINTIFFS and all members of the CALIFORNIA CLASS are uniformly  
16 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,  
17 DEFENDANT has failed to take the proper steps to determine whether PLAINTIFFS, and the  
18 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial  
19 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
20 exempt from applicable California labor laws. Since DEFENDANT affirmatively and willfully  
21 misclassified PLAINTIFFS and the members of the CALIFORNIA CLASS in compliance with  
22 California labor laws, DEFENDANT's practices violated and continue to violate California law.  
23 In addition, DEFENDANT acted deceptively by falsely and fraudulently telling PLAINTIFFS  
24 and each member of the CALIFORNIA CLASS that they are exempt from overtime pay when  
25 DEFENDANT knew or should have known that this statement is false and not based on known  
26 facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result  
27 of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT  
28 cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors



1 paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them in  
2 accordance with California law.

3 23. When PLAINTIFFS and other CALIFORNIA CLASS Members work overtime,  
4 DEFENDANT also failed to provide PLAINTIFFS and the other CALIFORNIA CLASS  
5 Members with a wage statement in writing that accurately sets forth gross wages earned, all  
6 applicable hourly rates in effect during the pay period and the corresponding amount of time  
7 worked at each hourly rate by the PLAINTIFFS and the other CALIFORNIA CLASS Members.  
8 This conduct violated California Labor Code § 226. The pay stub also does not accurately  
9 display anywhere PLAINTIFFS and the other CALIFORNIA CLASS Members' overtime work  
10 and applicable rates of overtime pay for the pay period.

11 24. By reason of this uniform conduct applicable to PLAINTIFFS and all the  
12 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
14 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly  
15 classify PLAINTIFFS and the CALIFORNIA CLASS of CMs as non-exempt. The proper  
16 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's  
17 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly  
18 calculate and/or pay all required overtime compensation for work performed by the members  
19 of the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor  
20 Code and the regulations promulgated thereunder as herein alleged.

21 25. Specifically as to PLAINTIFFS, they perform the finite set of tasks of processing  
22 entry level and intermediate level casualty claims with insureds, claimants, attorneys and  
23 medical professionals, opening and maintaining appropriate reserves throughout the life of the  
24 claim, managing the file through securing necessary documents via phone or written  
25 correspondence, processing of authorizations, making phone calls to employers, clients and  
26 medical providers, opening and processing mail, and processing the acceptance and denial of  
27 insurance claims in accordance with the policies, protocols and operations established by  
28 DEFENDANT. All of these tasks were performed in strict compliance with established

1 specific procedures and protocols which governs and controls every aspect of the work  
2 performed by PLAINTIFFS. PLAINTIFFS use the skill, training, and expertise acquired on the  
3 job to perform their job tasks, and perform these job tasks in compliance with the directives  
4 given to them by other employees of DEFENDANT. During the CALIFORNIA CLASS  
5 PERIOD, PLAINTIFFS as Claims Representatives, have been classified by DEFENDANT as  
6 exempt from overtime pay and work in excess of eight (8) hours in a workday and/or more than  
7 forty (40) hours in a workweek, but as a result of DEFENDANT's misclassification of  
8 PLAINTIFFS as exempt from the applicable California Labor Code provisions, PLAINTIFFS  
9 are not compensated by DEFENDANT for their overtime worked at the applicable overtime  
10 rate. DEFENDANT does not have a policy or practice which provides meal and rest breaks to  
11 PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and rest breaks.  
12 As a consequence of the foregoing, PLAINTIFFS are not provided with accurate and itemized  
13 wage statements showing the gross wages earned, the net wages earned, all applicable hourly  
14 rates in effect during the pay period, including overtime hourly rates, and the corresponding  
15 number of hours worked at each hourly rate, by DEFENDANT during the CALIFORNIA  
16 CLASS PERIOD in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has yet to pay  
17 PLAINTIFFS all of their wages due to them and DEFENDANT has failed to pay any penalty  
18 wages owed to them under California Labor Code Section 203.

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### **JURISDICTION AND VENUE**

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26. 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.

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27. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the

1 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS

2 **THE CALIFORNIA CLASS**

3 28. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
4 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
5 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California  
6 Class, defined as all persons who are or previously were employed by Defendants Ameriprise  
7 Auto & Home Insurance Company and/or Defendant IDS Property Casualty Insurance Company  
8 in California as Claims Representatives and were classified as exempt from overtime wages (the  
9 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years  
10 prior to the filing of this complaint and ending on the date as determined by the Court (the  
11 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
12 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

16 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
18 Requirements, and the applicable provisions of California law, intentionally, knowingly, and  
19 wilfully, engages in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively  
20 instituted a practice to ensure that the employees employed in a CM position are not properly  
21 classified as non-exempt from the requirements of California Labor Code §§ 510, *et seq.*

22 31. DEFENDANT has the burden of proof to make sure that each and every employee  
23 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*  
24 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in  
25 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice that  
26 misclassifies the CALIFORNIA CLASS Members as exempt. DEFENDANT's uniform policy  
27 and practice in place at all times during the CALIFORNIA CLASS PERIOD and currently in  
28 place is to systematically classify each and every CALIFORNIA CLASS Member as exempt

1 from the requirements of the California Labor Code §§ 510, *et seq.* This common business  
2 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on  
3 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code  
4 §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this  
5 claim.

6 32. At no time during PLAINTIFFS employment with DEFENDANT has any Claims  
7 Representative been reclassified as non-exempt from the applicable requirements of California  
8 Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly,  
9 and systematically classified as exempt upon being hired.

10 33. Any individual declarations of any employees offered at this time purporting to  
11 indicate that one or more Claims Representatives may have been properly classified is of no  
12 force or affect absent contemporaneous evidence that DEFENDANT's uniform system did not  
13 misclassify PLAINTIFFS and the other CALIFORNIA CLASS Members as exempt pursuant  
14 to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,  
15 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the  
16 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,  
17 PLAINTIFFS and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT  
18 to provide restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to  
19 retribute these funds to PLAINTIFFS and the CALIFORNIA CLASS Members according to  
20 proof.

21 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
22 CLASS Members is impracticable.

23 35. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
24 California law by:

- 25 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
26 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively  
27 having in place company policies, practices and procedures that uniformly  
28 misclassified PLAINTIFFS and the members of the CALIFORNIA

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- CLASS as exempt;
- (b) Committing an act of unfair competition in violation of the UCL, by unlawfully, unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that accurately determines the amount of working time spent by PLAINTIFFS and the members of the CALIFORNIA CLASS performing non-exempt labor;
- (c) Committing an act of unfair competition in violation of the UCL, by having in place a company policy, practice and procedure that fails to reclassify as non-exempt those members of the CALIFORNIA CLASS whose actual tasks were comprised of non-exempt job functions;
- (d) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFFS and the members of the CALIFORNIA CLASS who are improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT; and,
- (e) Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

36. This 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, and declaratory 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 PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the

1 other members of the CALIFORNIA CLASS, were initially classified as  
2 exempt upon hiring based on the defined corporate policies and practices  
3 and labored under DEFENDANT's systematic procedure that fails to  
4 properly classify as non-exempt PLAINTIFFS and the members of the  
5 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a  
6 result of DEFENDANT's employment practices. PLAINTIFFS and the  
7 members of the CALIFORNIA CLASS were and are similarly or  
8 identically harmed by the same unlawful, deceptive, unfair and pervasive  
9 pattern of misconduct engaged in by DEFENDANT by deceptively  
10 advising all Claims Representatives that they were exempt from overtime  
11 wages based on the defined corporate policies and practices, and unfairly  
12 failing to pay overtime to these employees who were improperly classified  
13 as exempt; and,

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

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

24 (a) Without class certification and determination of declaratory, statutory and  
25 other legal questions within the class format, prosecution of separate  
26 actions by individual members of the CALIFORNIA CLASS will create  
27 the risk of:

28 1) Inconsistent or varying adjudications with respect to individual

1 members of the CALIFORNIA CLASS which would establish  
2 incompatible standards of conduct for the parties opposing the  
3 CALIFORNIA CLASS; and/or,

4 2) Adjudication with respect to individual members of the  
5 CALIFORNIA CLASS which would as a practical matter be  
6 dispositive of interests of the other members not party to the  
7 adjudication or substantially impair or impede their ability to  
8 protect their interests.

9 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
10 act on grounds generally applicable to the CALIFORNIA CLASS, making  
11 appropriate class-wide relief with respect to the CALIFORNIA CLASS  
12 as a whole in that DEFENDANT uniformly classified and treated the  
13 Claims Representatives as exempt and, thereafter, uniformly failed to take  
14 proper steps to determine whether the Claims Representatives were  
15 properly classified as exempt, and thereby denied these employees  
16 overtime wages as required by law;

17 1) With respect to the First Cause of Action, the final relief on behalf  
18 of the CALIFORNIA CLASS sought does not relate exclusively to  
19 restitution because through this claim the PLAINTIFFS seek  
20 declaratory relief holding that DEFENDANT's policies and  
21 practices constitute unfair competition, along with incidental  
22 equitable relief as may be necessary to remedy the conduct declared  
23 to constitute unfair competition;

24 (c) Common questions of law and fact exist as to the members of the  
25 CALIFORNIA CLASS, with respect to the practices and violations of  
26 California law as listed above, and predominate over any question  
27 affecting only individual CALIFORNIA CLASS Members, and a Class  
28 Action is superior to other available methods for the fair and efficient

1 adjudication of the controversy, including consideration of:

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

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

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

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

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

27 4) A Class Action is superior to other available methods for the fair  
28 and efficient adjudication of this litigation because class treatment



1 will obviate the need for unduly and unnecessary duplicative  
2 litigation that is likely to result in the absence of certification of  
3 this Action pursuant to Cal. Code of Civ. Proc. § 382.

4 38. This Court should permit this Action to be maintained as a Class Action pursuant  
5 to Cal. Code of Civ. Proc. § 382, because:

- 6 (a) The questions of law and fact common to the CALIFORNIA CLASS  
7 predominate over any question affecting only individual CALIFORNIA  
8 CLASS Members because DEFENDANT's employment practices were  
9 uniform and systematically applied with respect to the CALIFORNIA  
10 CLASS;
- 11 (b) A Class Action is superior to any other available method for the fair and  
12 efficient adjudication of the claims of the members of the CALIFORNIA  
13 CLASS because in the context of employment litigation a substantial  
14 number of individual CALIFORNIA CLASS Members will avoid  
15 asserting their rights individually out of fear of retaliation or adverse  
16 impact on their employment;
- 17 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
18 impractical to bring all members of the CALIFORNIA CLASS before the  
19 Court;
- 20 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be  
21 able to obtain effective and economic legal redress unless the action is  
22 maintained as a Class Action;
- 23 (e) There is a community of interest in obtaining appropriate legal and  
24 equitable relief for the acts of unfair competition, statutory violations and  
25 other improprieties, and in obtaining adequate compensation for the  
26 injuries which DEFENDANT's actions have inflicted upon the  
27 CALIFORNIA CLASS;
- 28 (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of the  
2 CALIFORNIA CLASS for the injuries sustained;

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

6 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
7 the business records of DEFENDANT. The CALIFORNIA CLASS  
8 consists of all DEFENDANT's Claims Representatives who were  
9 classified as exempt and who were employed in California during the  
10 CALIFORNIA CLASS PERIOD; and,

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 40. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, and Sixth Causes  
22 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
23 CLASS who were employed in California (the "CALIFORNIA LABOR SUB-CLASS") at any  
24 time during the period beginning on the date three (3) years prior to the filing of this Complaint  
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS  
26 PERIOD") pursuant to California Code of Civil Procedure § 382. The amount in controversy  
27 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million  
28

1 dollars (\$5,000,000.00).

2 41. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
3 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare  
4 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and  
5 systematically misclassified the PLAINTIFFS and the other members of the CALIFORNIA  
6 CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime wages and  
7 other labor laws based on DEFENDANT's comprehensive policies and procedures in order to  
8 avoid the payment of overtime wages by misclassifying their positions as exempt from overtime  
9 wages and other labor laws. To the extent equitable tolling operates to toll claims by the  
10 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR  
11 SUB-CLASS PERIOD should be adjusted accordingly.

12 42. DEFENDANT maintains records from which the Court can ascertain and identify  
13 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS  
14 Members have been systematically, intentionally and uniformly misclassified as exempt as a  
15 matter of DEFENDANT's corporate policies, practices and procedures. PLAINTIFFS will seek  
16 leave to amend the Complaint to include these additional job titles when they have been  
17 identified.

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

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

- 22 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation  
23 to members of the CALIFORNIA LABOR SUB-CLASS in violation of  
24 the California Labor Code and California regulations and the applicable  
25 California Wage Order;
- 26 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
27 non-exempt employees entitled to overtime compensation for overtime  
28 worked under the overtime pay requirements of California law;

- 1 (c) Whether DEFENDANT's policy and practice of classifying the  
2 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime  
3 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS  
4 Members overtime violate applicable provisions of California law;
- 5 (d) Whether DEFENDANT unlawfully fails to keep and furnish  
6 CALIFORNIA LABOR SUB-CLASS Members with accurate records of  
7 overtime worked; and,
- 8 (e) The proper measure of damages and penalties owed to the members of the  
9 CALIFORNIA LABOR SUB-CLASS.

10 45. DEFENDANT, as a matter of corporate policy, practice and procedure,  
11 erroneously classifies all Claims Representatives as exempt from overtime wages and other  
12 labor laws. All Claims Representatives, including PLAINTIFFS, perform the same finite set  
13 of tasks and are paid by DEFENDANT according to uniform and systematic company  
14 procedures, which, as alleged herein above, fails to correctly pay overtime compensation. This  
15 business practice has been uniformly applied to each and every member of the CALIFORNIA  
16 LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a  
17 class-wide basis.

18 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
19 under California law by:

- 20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby  
21 failing to pay PLAINTIFFS and the members of the CALIFORNIA  
22 LABOR SUB-CLASS the correct overtime pay for a workday longer than  
23 eight (8) hours and/or a workweek longer than forty (40) hours for which  
24 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 25 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and  
26 the members of the CALIFORNIA LABOR SUB-CLASS who are  
27 improperly classified as exempt with an accurate itemized statement in  
28 writing showing the gross wages earned, the net wages earned, all

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applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the employee when these employees worked overtime from time to time in a pay period;

- (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks; and,
- (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

47. This 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 LABOR SUB-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, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were improperly classified as exempt and denied overtime pay as a result of DEFENDANT’s systematic classification practices. PLAINTIFFS and all the other members of the CALIFORNIA LABOR

1 SUB-CLASS sustained economic injuries arising from DEFENDANT's  
2 violations of the laws of California; and,

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

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

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

- 17 1) Inconsistent or varying adjudications with respect to individual  
18 members of the CALIFORNIA LABOR SUB-CLASS which  
19 would establish incompatible standards of conduct for the parties  
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,  
21 2) Adjudication with respect to individual members of the  
22 CALIFORNIA LABOR SUB-CLASS which would as a practical  
23 matter be dispositive of interests of the other members not party to  
24 the adjudication or substantially impair or impede their ability to  
25 protect their interests.

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

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
2 DEFENDANT uniformly classified and treated the Claims  
3 Representatives as exempt and, thereafter, uniformly failed to take proper  
4 steps to determine whether the Claims Representatives were properly  
5 classified as exempt, and thereby denied these employees overtime wages  
6 as required by law;

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

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

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

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

27 B. Adjudications with respect to individual members of the  
28 CALIFORNIA LABOR SUB-CLASS would as a practical

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

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

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

16 49. This Court should permit this Action to be maintained as a Class Action pursuant  
17 to Cal. Code of Civ. Proc. § 382, because:

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

21 (b) A Class Action is superior to any other available method for the fair and  
22 efficient adjudication of the claims of the members of the CALIFORNIA  
23 LABOR SUB-CLASS because in the context of employment litigation a  
24 substantial number of individual CALIFORNIA LABOR SUB-CLASS  
25 Members will avoid asserting their rights individually out of fear of  
26 retaliation or adverse impact on their employment;

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so  
28 numerous that it is impractical to bring all members of the CALIFORNIA



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LABOR SUB-CLASS before the Court;

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

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3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

6 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

7 50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
9 Complaint.

10 51. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
11 Code § 17021.

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

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

20 California Business & Professions Code § 17203.

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

28 54. By the conduct alleged herein, DEFENDANT's practices are unlawful and unfair

1 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous  
2 or substantially injurious to employees, and are without valid justification or utility for which  
3 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the  
4 California Business & Professions Code, including restitution of wages wrongfully withheld.

5 55. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
6 fraudulent in that DEFENDANT's uniform policy and practice is to represent to PLAINTIFFS  
7 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact  
8 these representations are false and likely to deceive, for which this Court should issue injunctive  
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
10 wrongfully withheld.

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

15 57. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
16 deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide  
17 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

23 59. PLAINTIFFS further demand on behalf of themselves and on behalf of each  
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty  
25 paid rest period was not timely provided as required by law.

26 60. By and through the unlawful and unfair business practices described herein,  
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
28 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and

1 benefits guaranteed by law and contract, all to the detriment of these employees and to the  
2 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors  
3 who comply with the law.

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

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

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

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

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**SECOND CAUSE OF ACTION**

4

**For Failure To Pay Overtime Compensation**

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

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**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**

7

**Defendants)**

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

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66. Cal. Lab. Code § 510 states in relevant part:

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Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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67. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

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68. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

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69. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

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70. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

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71. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard

1 conditions of labor fixed by the commission shall be the maximum hours of work and the  
2 standard conditions of labor for employees. The employment of any employee for longer hours  
3 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

4 72. DEFENDANT has intentionally and uniformly designated certain employees as  
5 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic  
6 expectations and actual overall requirements of the job, including PLAINTIFFS and the other  
7 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-  
8 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid  
9 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial  
10 Welfare Commission requirements.

11 73. For an employee to be exempt as a bona fide "executive," all the following criteria  
12 must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee's primary duty must be management of the enterprise, or of a  
14 customarily recognized department or subdivision; and,  
15 (b) The employee must customarily and regularly direct the work of at least two (2)  
16 or more other employees; and,  
17 (c) The employee must have the authority to hire and fire, or to command particularly  
18 serious attention to his or her recommendations on such actions affecting other  
19 employees; and,  
20 (d) The employee must customarily and regularly exercise discretion and independent  
21 judgment; and,  
22 (e) The employee must be primarily engaged in duties which meet the test of  
23 exemption.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they  
25 all fail to meet the requirements of being an "executive" within the meaning of the applicable  
26 Wage Order.

27 74. For an employee to be exempt as a bona fide "administrator," all of the following  
28 criteria must be met and DEFENDANT has the burden of proving that:

- 1 (a) The employee must perform office or non-manual work directly related to  
2 management policies or general business operation of the employer; and,  
3 (b) The employee must customarily and regularly exercise discretion and independent  
4 judgment; and,  
5 (c) The employee must regularly and directly assist a proprietor or an exempt  
6 administrator; or,  
7 (d) The employee must perform, under only general supervision, work requiring  
8 special training, experience, or knowledge; or,  
9 (e) The employee must execute special assignments and tasks under only general  
10 supervision; and,  
11 (f) The employee must be primarily engaged in duties which meet the test of  
12 exemption.

13 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
14 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
15 Order.

16 75. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
17 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
18 with to place an employee in the "professional" exempt category. For an employee to be exempt  
19 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
20 burden of proving that:

- 21 (a) The employee is primarily engaged in an occupation commonly recognized as a  
22 learned or artistic profession. For the purposes of this subsection, "learned or  
23 artistic profession" means an employee who is primarily engaged in the  
24 performance of:  
25 1) Work requiring knowledge of an advanced type in a field or science or  
26 learning customarily acquired by a prolonged course of specialized  
27 intellectual instruction and study, as distinguished from a general  
28 academic education and from an apprenticeship, and from training in the

1 performance of routine mental, manual, or physical processes, or work that  
2 is an essential part or necessarily incident to any of the above work; or,

3 2) Work that is original and creative in character in a recognized field of  
4 artistic endeavor, and the result of which depends primarily on the  
5 invention, imagination or talent of the employee or work that is an  
6 essential part of or incident to any of the above work; and,

7 3) Whose work is predominately intellectual and varied in character (as  
8 opposed to routine mental, manual, mechanical, or physical work) and is  
9 of such character cannot be standardized in relation to a given period of  
10 time.

11 (b) The employee must customarily and regularly exercise discretion and independent  
12 judgment; and,

13 (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
14 state minimum wage for full-time employment.

15 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they  
16 all fail to meet the requirements of being a "professional" within the meaning of the applicable  
17 Wage Order.

18 76. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
19 CLASS, do not fit the definition of an exempt executive, administrative, or professional  
20 employee because:

21 (a) They did not work as executives or administrators; and,

22 (b) The professional exemption does not apply to the PLAINTIFFS, nor to the other  
23 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet  
24 all the applicable requirements to work under the professional exemption for the  
25 reasons set forth above in this Complaint.

26 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS, and  
27 the other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours  
28 in a workday and/or more than forty (40) hours in a workweek.



1           78.    DEFENDANT fails to pay PLAINTIFFS, and the other members of the  
2 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in  
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and  
4 1198, even though PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
5 CLASS, are required to work, and do in fact work, overtime.

6           79.    By virtue of DEFENDANT's unlawful failure to pay additional compensation  
7 to PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their  
8 overtime work, PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
9 CLASS, have suffered, and will continue to suffer, an economic injury in amounts which are  
10 presently unknown to them and which will be ascertained according to proof at trial.

11           80.    DEFENDANT knew or should have known that PLAINTIFFS, and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and  
13 DEFENDANT systematically elected, either through intentional malfeasance or gross  
14 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate policy,  
15 practice and procedure.

16           81.    Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
17 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,  
18 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
19 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined  
20 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their  
21 employment, these employees would also be entitled to waiting time penalties under Cal. Lab.  
22 Code § 203, which penalties are sought herein. Further, PLAINTIFFS, and the other members  
23 of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and recover statutory costs.

24           82.    In performing the acts and practices herein alleged in violation of labor laws and  
25 refusing to provide the requisite overtime compensation, DEFENDANT acted and continues  
26 to act intentionally, oppressively, and maliciously toward PLAINTIFFS, and toward the other  
27 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of  
28 their legal rights, or the consequences to them, and with the despicable intent of depriving them

1 of their property and legal rights and otherwise causing them injury in order to increase  
2 corporate profits at the expense of PLAINTIFFS and the members of the CALIFORNIA  
3 LABOR SUB-CLASS.

4  
5 **THIRD CAUSE OF ACTION**

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

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

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
9 **Defendants)**

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

13 84. During the CALIFORNIA CLASS PERIOD from time to time, DEFENDANT  
14 fails to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
15 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
16 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR  
17 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their  
18 duties for the legally required off-duty meal periods. As a result of their rigorous work  
19 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are from  
20 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
21 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
22 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
23 by DEFENDANT's business records. As a result, PLAINTIFFS and other members of the  
24 CALIFORNIA LABOR SUB-CLASS therefore forfeit meal breaks without additional  
25 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

26 85. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-  
28 CLASS Members who are not provided a meal period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each  
2 workday that a meal period is not provided.

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

7  
8 **FOURTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
12 **Defendants)**

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

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

27 89. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

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9 **FIFTH CAUSE OF ACTION**

10 **For Failure to Provide Accurate Itemized Statements**

11 **[Cal. Lab. Code § 226]**

12 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**  
13 **Defendants)**

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

17 92. Cal. Labor Code § 226 provides that an employer must furnish employees with  
18 an "accurate itemized" statement in writing showing:

19 (1) gross wages earned,

20 (2) total hours worked by the employee, except for any employee whose compensation  
21 is solely based on a salary and who is exempt from payment of overtime under  
22 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
23 Commission,

24 (3) the number of piecerate units earned and any applicable piece rate if the employee  
25 is paid on a piece-rate basis,

26 (4) all deductions, provided that all deductions made on written orders of the employee  
27 may be aggregated and shown as one item,

28 (5) net wages earned,

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

9 93. In the pay periods PLAINTIFFS and other CALIFORNIA CLASS Members work  
10 overtime, DEFENDANT violated Labor Code § 226, in that DEFENDANT fails to provide an  
11 accurate wage statement in writing that properly and accurately itemizes the actual time worked  
12 by PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS at the  
13 effective regular rates of pay and the effective overtime rates of pay.

14 94. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
15 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
16 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
17 true time worked and the amount of employment taxes which were not properly paid to state and  
18 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS, and  
19 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated  
20 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for  
21 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according  
22 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFFS and each  
23 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

24  
25 **SIXTH CAUSE OF ACTION**

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

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

28 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**

1 **Defendants)**

2 95. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior  
4 paragraphs of this Complaint.

5 96. Cal. Lab. Code § 200 provides that:

6 As used in this article:

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

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

11 97. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
12 an employee, the wages earned and unpaid at the time of discharge are due and payable  
13 immediately."

14 98. Cal. Lab. Code § 202 provides, in relevant part, that:

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

22 99. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR  
23 SUB-CLASS Members' employment contract.

24 100. Cal. Lab. Code § 203 provides:

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

101. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to  
these employees as required by law.

102. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,  
2 PLAINTIFFS demand up to thirty days of pay as penalty for not paying all wages due at time  
3 of termination for all employees who terminated employment during the CALIFORNIA  
4 LABOR SUB-CLASS PERIOD, and demand an accounting and payment of all wages due, plus  
5 interest and statutory costs as allowed by law.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and  
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

- 11 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
12 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;  
13 B) An order requiring DEFENDANT to correctly calculate and pay all overtime  
14 wages and all sums unlawfully withheld from compensation due to PLAINTIFFS  
15 and the other members of the CALIFORNIA CLASS;  
16 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
17 for restitution of the sums incidental to DEFENDANT's violations due to the  
18 PLAINTIFFS and to the other members of the CALIFORNIA CLASS according  
19 to proof; and,  
20 D) An order temporarily, preliminarily, and permanently enjoining and restraining  
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
24 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action  
25 pursuant to California Code of Civil Procedure § 382;  
26 B) Compensatory damages, according to proof at trial, for overtime compensation  
27 due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD  
plus interest thereon at the statutory rate;

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- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order.

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or §1194.

Dated: September 10, 2019 BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiffs



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**DEMAND FOR A JURY TRIAL**

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

Dated: September 10, 2019

BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiffs

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