

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/16/2020 at 07:23:29 AM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

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

ASSET GAS INCORPORATED, a California Corporation;
ASSET PROPERTY MANAGEMENT, a California Corporation;
ASSET GAS, LLC, a California Limited Liability Company; and DOES 1-50, Inclusive

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

DAVID SPENCER, an individual, on behalf of himself and on behalf of all persons similarly situated

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

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

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


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

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

The name and address of the court is:
(El nombre y dirección de la corte es): **San Diego Superior Court-Hall of Justice**
330 West Broadway
San Diego, California 92101

CASE NUME
(Número del **37-2020-00024642-CU-OE-CTL**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq., 5850 Oberlin Drive Suite 230A, San Diego, CA 92121 Telephone: (619) 225-9047

DATE: **07/17/2020** Clerk, by  , Deputy
(Fecha) (Secretario) **J. Hernandez** (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
San Diego, CA 92121
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

4 *Additional Counsel on Next Page*
5 Attorneys for Plaintiff

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR COUNTY OF SAN DIEGO**

8 DAVID SPENCER, an individual, on behalf of
himself and on behalf of all persons similarly
9 situated,

10 Plaintiff,

11 v.

12 ASSET GAS INCORPORATED, a California
Corporation; ASSET PROPERTY
13 MANAGEMENT, a California Corporation;
ASSET GAS, LLC, a California Limited
14 Liability Company; and DOES 1-50, Inclusive,

15 Defendants.

Case No: 37-2020-00024642-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226
- 9) VIOLATION OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING); and
- 10) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

1 **JCL LAW FIRM, APC**
2 Jean-Claude Lapuyade (State Bar #248676)
3 3990 Old Town Avenue, Suite C204
4 San Diego, CA 92110
5 Telephone: (619)599-8292
6 Facsimile: (619) 599-8291

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Attorneys for Plaintiff

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant ASSET GAS INCORPORATED is a California corporation that at all
6 relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California. Defendant ASSET PROPERTY MANAGEMENT is a California
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California. Defendant ASSET GAS, LLC is a
10 California Limited Liability Company that at all relevant times mentioned herein conducted and
11 continues to conduct substantial and regular business throughout California.

12 2. Defendant ASSET GAS INCORPORATED, Defendant ASSET PROPERTY
13 MANAGEMENT, and Defendant ASSET GAS, LLC were the joint employers of PLAINTIFF
14 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for
15 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
16 collectively referred to herein as “DEFENDANTS”.

17 3. Defendants manage and operate various properties, including gas stations and
18 convenience stores throughout California.

19 4. PLAINTIFF was employed by DEFENDANTS in California from October 2019
20 to December 2019 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
21 required meal and rest periods and payment of minimum and overtime wages due for all time
22 worked.

23 5. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all persons who are or previously were employed by DEFENDANT ASSET GAS
25 INCORPORATED, and/or ASSET PROPERTY MANAGEMENT, and/or ASSET GAS, LLC,
26 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
27 during the period beginning April 6, 2016 and ending on the date as determined by the Court (the
28

1 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
6 which failed to lawfully compensate these employees. DEFENDANTS’ uniform policy and
7 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
8 DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members
9 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
10 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
11 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
12 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
13 equitable relief.

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

23 8. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3 **THE CONDUCT**

4 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF
8 and CALIFORNIA CLASS Members to work without paying them for all the time they were
9 under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work
10 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break, as well as
11 before and after clocking in and out when PLAINTIFF's shift has not yet started or should have
12 ended. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
13 minimum wage and overtime compensation by regularly working without their time being
14 accurately recorded and without compensation at the applicable minimum wage and overtime
15 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
17 records.

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

1 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANTS' strict corporate policy and practice.

3 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
4 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
5 without being provided ten (10) minute rest periods. Further, these employees were denied their
6 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
7 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
8 worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest
9 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
10 time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one
11 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
13 DEFENDANTS and DEFENDANTS' managers. Additionally, the applicable California Wage
14 Order requires employers to provide employees with off-duty rest periods, which the California
15 Supreme Court defined as time during which an employee is relieved from all work related duties
16 and free from employer control. In so doing, the Court held that the requirement under California
17 law that employers authorize and permit all employees to take rest period means that employers
18 must relieve employees of all duties and relinquish control over how employees spend their time
19 which includes control over the locations where employees may take their rest period. Employers
20 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
21 minutes back. Here, DEFENDANTS' uniform policy restricted PLAINTIFF and other
22 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
23 DEFENDANTS' rule pursuant to which PLAINTIFF and other CALIFORNIA CLASS Members
24 could not leave the work premises during their rest period.

25 12. DEFENDANTS as a matter of corporate policy, practice and procedure,
26 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
27 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
28 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
2 are required to indemnify employees for all expenses incurred in the course and scope of their
3 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them
7 to be unlawful."

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

19 14. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
20 miss meal and rest breaks, when they worked off the clock, and/or when they worked overtime
21 without being compensated the correct overtime rate, DEFENDANTS also failed to provide
22 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
23 wage statements which failed to show, among other things, the correct wages paid and the
24 premiums paid for missed meal and rest breaks. Cal. Lab. Code § 226 provides that every
25 employer shall furnish each of his or her employees with an accurate itemized wage statement in
26 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
27 during the pay period and the corresponding amount of time worked at each hourly rate.
28 Additionally, the wage statements DEFENDANTS issued to PLAINTIFF and other

1 CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a) in that DEFENDANTS
2 failed to correctly list the correct name(s) of the legal entity that was the employer of PLAINTIFF
3 and the CALIFORNIA CLASS Members. Aside, from the violations listed above in this
4 paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists
5 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from
6 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
7 wage statements which violated Cal. Lab. Code § 226.

8 15. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
10 matter of company policy, practice and procedure, intentionally, knowingly and systematically
11 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
12 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is intended to
13 purposefully avoid the payment for all time worked as required by California law which allows
14 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
15 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
16 against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

27 17. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores
28 and gas stations provide ample space behind each counter area to allow for the presence and use

1 of a stool or seat by DEFENDANTS' employees' during the performance of their work duties.
2 DEFENDANTS' employees' working at DEFENDANTS' stores spend a very substantial portion,
3 and, in many workdays, the vast majority of their working time behind these counters. The nature
4 of the position can reasonably be accomplished while using a seat/stool.

5 18. In violation of the applicable sections of the California Labor Code and the
6 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
7 DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly
8 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable
9 seating when the nature of these employees' work reasonably permitted sitting.

10 19. DEFENDANTS knew or should have known that PLAINTIFF and other
11 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
12 interfere with the performance of their duties, and that DEFENDANTS did not provide suitable
13 seating and/or did not allow them to sit when it did not interfere with the performance of their
14 duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees,
15 DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001, Section
16 14 by failing to provide suitable seats

17 20. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
18 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor
19 Code, failed to pay him all minimum and overtime wages due to him, and failed to provide him
20 with suitable seating. DEFENDANTS also failed to reimburse PLAINTIFF for his personal cell
21 phone use. DEFENDANTS did not have a policy or practice which provided timely off-duty
22 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
23 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
24 from being relieved of all of his duties for the legally required off-duty meal periods. As a result,
25 DEFENDANTS' failure to provide PLAINTIFF with the legally required meal periods is
26 evidenced by DEFENDANTS' business records. As a result of DEFENDANTS not accurately
27 recording all missed meal and rest periods and/or minimum and overtime wages due, the wage
28 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,

1 Labor Code Section 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all wages due
2 to him and DEFENDANTS have failed to pay any penalty wages owed to him under California
3 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
4 the sum or value of \$75,000.

5 JURISDICTION AND VENUE

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

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

16 THE CALIFORNIA CLASS

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

26 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

1 25. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

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

17 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
23 in place company policies, practices and procedures that uniformly and
24 systematically failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages owed and
26 overtime wages at the correct rate owed for work performed by these employees;

- 1 b. Committing an act of unfair competition in violation of the UCL, by failing to
- 2 provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
- 3 CLASS members;
- 4 c. Committing an act of unfair competition in violation of the California Unfair
- 5 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
- 6 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
- 7 members with necessary expenses incurred in the discharge of their job duties.

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

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

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

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

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

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

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

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

24 i. With respect to the First Cause of Action, the final relief on behalf of the
25 CALIFORNIA CLASS sought does not relate exclusively to restitution
26 because through this claim PLAINTIFF seeks declaratory relief holding
27 that the DEFENDANTS' policy and practices constitute unfair
28 competition, along with declaratory relief, injunctive relief, and incidental

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equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent

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employer, the Class Action is the only means to assert their claims through a representative; and

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
20 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who were employed by DEFENDANT ASSET GAS INCORPORATED,
22 and/or ASSET PROPERTY MANAGEMENT, and/or ASSET GAS, LLC, in California (the
23 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning April 6, 2017
24 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
25 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
26 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
27 (\$5,000,000.00).
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1 34. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, willfully,
4 and systematically, engaged in a practice whereby DEFENDANTS failed to correctly calculate
5 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
6 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work, required
7 employees to perform this work and permitted or suffered to permit this work. DEFENDANTS
8 have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which
9 these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To
10 the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
11 against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
12 accordingly.

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

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

20 37. 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 DEFENDANTS unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
24 pay for missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
28 statements

- 1 c. Whether DEFENDANTS has engaged in unfair competition by the above-listed
- 2 conduct;
- 3 d. The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and
- 5 e. Whether DEFENDANTS' conduct was willful.

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

- 8 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
- 9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
- 10 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
- 11 Lab. Code § 1194;
- 12 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 14 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 15 Cal. Lab. Code §§ 1194 and 1197;
- 16 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 17 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 18 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 19 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 21 statement in writing showing the corresponding correct amount of wages earned
- 22 by the employee;
- 23 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 24 CALIFORNIA CLASS members with necessary expenses incurred in the
- 25 discharge of their job duties; and
- 26 f. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 27 employee is discharged or quits from employment, the employer must pay the
- 28 employee all wages due without abatement, by failing to tender full payment

1 and/or restitution of wages owed or in the manner required by California law to
2 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
3 their employment.

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

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

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

14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
16 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
17 employee paid on an hourly basis who was subjected to the DEFENDANTS’
18 practice and policy which failed to pay the correct amount of wages due to the
19 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
20 a result of DEFENDANTS’ employment practices. PLAINTIFF and the members
21 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
22 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
23 misconduct engaged in by DEFENDANTS; and

24 d. The representative PLAINTIFF will fairly and adequately represent and protect
25 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
26 who are competent and experienced in Class Action litigation. There are no
27 material conflicts between the claims of the representative PLAINTIFF and the
28 members of the CALIFORNIA LABOR SUB-CLASS that would make class

1 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
2 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
3 Members.

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

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

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

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

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

25 c. Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
27 of California Law as listed above, and predominate over any question affecting
28 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient adjudication
2 of the controversy, including consideration of:

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

9 ii. Class certification will obviate the need for unduly duplicative litigation
10 that would 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
14 DEFENDANTS; and/or,

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

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

26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will obviate
28 the need for unduly and unnecessary duplicative litigation that is likely to

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result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

20 43. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

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

1 use or employment by any person of any practice which constitutes unfair competition, as
2 defined in this chapter, or as may be necessary to restore to any person in interest any
3 money or property, real or personal, which may have been acquired by means of such
4 unfair competition. (Cal. Bus. & Prof. Code § 17203).

5 45. By the conduct alleged herein, DEFENDANTS have engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
9 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
10 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
11 constitute unfair competition, including restitution of wages wrongfully withheld.

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

18 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
19 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
20 mandated meal and rest periods and the required amount of compensation for missed meal and
21 rest periods, and failed to pay minimum and overtime wages owed, and failed to reimburse all
22 necessary business expenses incurred, due to a systematic business practice that cannot be
23 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
24 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
25 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
26 restitution of wages wrongfully withheld.

27 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
28 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

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

3 49. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the

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

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

7 56. PLAINTIFF 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 of
9 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
10 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
11 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
12 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
13 unlawful and unfair business practices.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

22 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
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1 60. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.

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

6 62. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
7 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
8 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was
9 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS.

11 63. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
15 pay.

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

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

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

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

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

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

21 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
23 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
24 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA

1 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
2 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
3 CLASS Members are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

6 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

12 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
13 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
14 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these
15 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
16 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

26 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
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1 DEFENDANTS and were not paid for all the time they worked, including overtime work, and/or
2 at the correct overtime rate.

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

10 78. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
12 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANTS acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

16 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
18 the correct overtime compensation for their time worked for DEFENDANT.

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

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

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

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

17 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
19 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
21 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
23 overtime wages for their overtime worked.

24 85. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all time worked and provide them with the requisite compensation, DEFENDANTS acted and
27 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

1 DEFENDANT for their meal periods. Additionally, DEFENDANTS' failure to provide
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
3 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
4 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members
5 with a second off-duty meal period in some workdays in which these employees were required by
6 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of
7 the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **(Cal. Lab. Code §§ 2802)**

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

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

25 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

26 An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her
28 duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful.

3 97. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
4 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for required expenses incurred in the discharge of their job duties for DEFENDANT’S
6 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
7 CLASS members for expenses which included, but were not limited to, costs related to using their
8 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
9 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
10 their personal cell phones for work-related business. DEFENDANT’S uniform policy, practice
11 and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
12 members for expenses resulting from using their personal cellular phones for DEFENDANTS
13 within the course and scope of their employment for DEFENDANT. These expenses were
14 necessary to complete their principal job duties. DEFENDANTS are estopped by
15 DEFENDANT’S conduct to assert any waiver of this expectation. Although these expenses were
16 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the
18 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
19 do under the laws and regulations of California.

20 98. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
21 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
22 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
23 at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

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

9 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
10 “accurate itemized” statement in writing showing:

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

1 101. When DEFENDANTS did not accurately record PLAINTIFF’s and other
2 CALIFORNIA CLASS Members’ wages, did not pay the wages at the correct rate, and failed to
3 record and pay missed meal and rest breaks, DEFENDANTS violated Cal. Lab. Code § 226 in
4 that DEFENDANTS failed to provide an accurate wage statement in writing that properly and
5 accurately itemizes all missed meal and rest periods and wages owed to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the
7 correct wages earned by the employees. Additionally, the wage statements DEFENDANTS
8 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
9 Section 226(a) in that DEFENDANTS failed to correctly list the correct name(s) of the legal entity
10 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members.

11 102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
14 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
15 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
17 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
18 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
19 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
20 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
21 member of the CALIFORNIA LABOR SUB-CLASS herein).

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal. Lab. Code § 203)

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

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

104. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or her 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 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 mailing shall constitute the date of payment

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

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

5 108. Cal. Lab. Code § 203 provides:

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

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

14 110. 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, PLAINTIFF
16 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for
17 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
18 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory
19 costs as allowed by law.

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE SUITABLE SEATING**

22 **(Cal. Lab. Code §§1198 et seq. & California Code of Regulations, Title 8, Section 11070(14))**

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

24 111. PLAINTIFF, and the other AGGRIEVED EMPLOYEES, reallege and incorporate
25 by this reference, as though fully set forth herein, all paragraphs of this Complaint.

26 112. California Labor Code section 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable wage order.
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1 113. California Labor Code section 1198 requires that “. . . the standard conditions of
2 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
3 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.
4 California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working
5 employees shall be provided with suitable seats when the nature of the work reasonably permits the
6 use of seats."

7 114. California Code of Regulations, Title 8, section 11070(14)(B) provides that
8 "[w]hen employees are not engaged in the active duties of their employment and the nature of the
9 work requires standing, an adequate number of suitable seats shall be placed in reasonable
10 proximity to the work area and employees shall be permitted to use such seats when it does not
11 interfere with the performance of their duties."

12 115. DEFENDANTS violated California Labor Code section 1198 and California Code
13 of Regulations, Title 8, section 11070(14) because PLAINTIFF and AGGRIEVED
14 EMPLOYEES were not permitted to sit, even if they were not engaged in active duties. They
15 were not permitted to sit, even when it would not interfere with the performance of their duties,
16 nor were they provided with suitable seats.

17 116. PLAINTIFF and AGGRIEVED EMPLOYEES are entitled to recover all remedies
18 available for violations of California Labor Code section 1198 and California Code of
19 Regulations, Title 8, section 11070(14)

20 117. Pursuant to the civil penalties provided for in California Labor Code sections 2699
21 (f) and (g), the State of California, PLAINTIFF and other aggrieved employees are entitled to
22 recover civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
24 for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code
25 section 1198.

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TENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFFS against all Defendants)

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5 118. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 120. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this Representative Action on behalf of the State of California with respect to herself
19 and all individuals who are or previously were employed by DEFENDANT as sales persons in
20 California during the time period of May 11, 2019 until the present (the "AGGRIEVED
21 EMPLOYEES").

22 121. On May 11, 2020, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific
24 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
25 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
27 pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action under
28 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
AGGRIEVED EMPLOYEES as herein defined.

- 1 c. An order requiring DEFENDANT to pay all overtime wages and all sums
2 unlawfully withheld from compensation due to PLAINTIFF and the other members
3 of the CALIFORNIA CLASS; and
- 4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 a. That the Court certify the Second, Third, Fourth, and Fifth Causes of Action
9 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to
10 Cal. Code of Civ. Proc. § 382;
- 11 b. Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due to PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
14 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 15 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
16 the applicable IWC Wage Order;
- 17 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
18 which a violation occurs and one hundred dollars (\$100) per each member of the
19 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
20 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
21 an award of costs for violation of Cal. Lab. Code § 226
- 22 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
23 CLASS as a penalty from the due date thereof at the same rate until paid or until an
24 action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 25 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit.
- 28 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
- 4. On all claims:
 - a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: July 16, 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 16, 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

May 11, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
Via Online Submission

ASSET GAS INCORPORATED
c/o Asset Property Management
7969 Engineer Road, Suite 108
San Diego, CA 92111

ASSET PROPERTY MANAGEMENT
c/o JOSEPH F OLIVER
7969 ENGINEER ROAD, 108
SAN DIEGO CA 92111

ASSET GAS LLC
c/o JOSEPH F OLIVER
1215 MUIRLANDS DR.
LA JOLLA CA 92037

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, California Code or regulations, Title 8 Section 1 1070(14) (Failure to Provide Seating) and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents DAVID SPENCER (“Plaintiff”) and other aggrieved employees in an action against ASSET GAS INCORPORATED, ASSET PROPERTY MANAGEMENT, and ASSET GAS, LLC, (“Defendants”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from October 2019 to December 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Plaintiff performed tasks which reasonably permitted sitting, and a seat would not have interfered with Plaintiff’s performance of any of his tasks that may have required him to stand. Defendants failed to provide Plaintiff and other aggrieved employees with a suitable seat. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide

accurate wage statements. Accordingly, Plaintiff contends that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, and applicable wage orders, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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

Respectfully,



Shani O. Zakay
Attorney at Law

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8 Attorneys for Plaintiff

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

11 DAVID SPENCER, an individual, on behalf of
himself and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 v.

15 ASSET GAS INCORPORATED, a California
Corporation; ASSET PROPERTY
16 MANAGEMENT, a California Corporation;
ASSET GAS, LLC, a California Limited
17 Liability Company; and DOES 1-50, Inclusive,

18 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226
- 9) VIOLATION OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING)

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant ASSET GAS INCORPORATED is a California corporation that at all
6 relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California. Defendant ASSET PROPERTY MANAGEMENT is a California
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California. Defendant ASSET GAS, LLC is a
10 California Limited Liability Company that at all relevant times mentioned herein conducted and
11 continues to conduct substantial and regular business throughout California.

12 2. Defendant ASSET GAS INCORPORATED, Defendant ASSET PROPERTY
13 MANAGEMENT, and Defendant ASSET GAS, LLC were the joint employers of PLAINTIFF
14 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for
15 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
16 collectively referred to herein as “DEFENDANTS”.

17 3. Defendants manage and operate various properties, including gas stations and
18 convenience stores throughout California.

19 4. PLAINTIFF was employed by DEFENDANTS in California from October 2019
20 to December 2019 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
21 required meal and rest periods and payment of minimum and overtime wages due for all time
22 worked.

23 5. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all persons who are or previously were employed by DEFENDANT ASSET GAS
25 INCORPORATED, and/or ASSET PROPERTY MANAGEMENT, and/or ASSET GAS, LLC,
26 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
27 during the period beginning April 6, 2016 and ending on the date as determined by the Court (the
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1 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
6 which failed to lawfully compensate these employees. DEFENDANTS’ uniform policy and
7 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
8 DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members
9 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
10 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
11 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
12 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
13 equitable relief.

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

23 8. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3 **THE CONDUCT**

4 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF
8 and CALIFORNIA CLASS Members to work without paying them for all the time they were
9 under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work
10 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break, as well as
11 before and after clocking in and out when PLAINTIFF's shift has not yet started or should have
12 ended. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
13 minimum wage and overtime compensation by regularly working without their time being
14 accurately recorded and without compensation at the applicable minimum wage and overtime
15 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
17 records.

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

1 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANTS' strict corporate policy and practice.

3 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
4 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
5 without being provided ten (10) minute rest periods. Further, these employees were denied their
6 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
7 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
8 worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest
9 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
10 time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one
11 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
13 DEFENDANTS and DEFENDANTS' managers. Additionally, the applicable California Wage
14 Order requires employers to provide employees with off-duty rest periods, which the California
15 Supreme Court defined as time during which an employee is relieved from all work related duties
16 and free from employer control. In so doing, the Court held that the requirement under California
17 law that employers authorize and permit all employees to take rest period means that employers
18 must relieve employees of all duties and relinquish control over how employees spend their time
19 which includes control over the locations where employees may take their rest period. Employers
20 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
21 minutes back. Here, DEFENDANTS' uniform policy restricted PLAINTIFF and other
22 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
23 DEFENDANTS' rule pursuant to which PLAINTIFF and other CALIFORNIA CLASS Members
24 could not leave the work premises during their rest period.

25 12. DEFENDANTS as a matter of corporate policy, practice and procedure,
26 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
27 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
28 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
2 are required to indemnify employees for all expenses incurred in the course and scope of their
3 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them
7 to be unlawful."

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

19 14. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
20 miss meal and rest breaks, when they worked off the clock, and/or when they worked overtime
21 without being compensated the correct overtime rate, DEFENDANTS also failed to provide
22 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
23 wage statements which failed to show, among other things, the correct wages paid and the
24 premiums paid for missed meal and rest breaks. Cal. Lab. Code § 226 provides that every
25 employer shall furnish each of his or her employees with an accurate itemized wage statement in
26 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
27 during the pay period and the corresponding amount of time worked at each hourly rate.
28 Additionally, the wage statements DEFENDANTS issued to PLAINTIFF and other

1 CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a) in that DEFENDANTS
2 failed to correctly list the correct name(s) of the legal entity that was the employer of PLAINTIFF
3 and the CALIFORNIA CLASS Members. Aside, from the violations listed above in this
4 paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists
5 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from
6 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
7 wage statements which violated Cal. Lab. Code § 226.

8 15. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
10 matter of company policy, practice and procedure, intentionally, knowingly and systematically
11 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
12 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is intended to
13 purposefully avoid the payment for all time worked as required by California law which allows
14 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
15 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
16 against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

27 17. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores
28 and gas stations provide ample space behind each counter area to allow for the presence and use

1 of a stool or seat by DEFENDANTS' employees' during the performance of their work duties.
2 DEFENDANTS' employees' working at DEFENDANTS' stores spend a very substantial portion,
3 and, in many workdays, the vast majority of their working time behind these counters. The nature
4 of the position can reasonably be accomplished while using a seat/stool.

5 18. In violation of the applicable sections of the California Labor Code and the
6 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
7 DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly
8 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable
9 seating when the nature of these employees' work reasonably permitted sitting.

10 19. DEFENDANTS knew or should have known that PLAINTIFF and other
11 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
12 interfere with the performance of their duties, and that DEFENDANTS did not provide suitable
13 seating and/or did not allow them to sit when it did not interfere with the performance of their
14 duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees,
15 DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001, Section
16 14 by failing to provide suitable seats

17 20. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
18 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor
19 Code, failed to pay him all minimum and overtime wages due to him, and failed to provide him
20 with suitable seating. DEFENDANTS also failed to reimburse PLAINTIFF for his personal cell
21 phone use. DEFENDANTS did not have a policy or practice which provided timely off-duty
22 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed
23 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
24 from being relieved of all of his duties for the legally required off-duty meal periods. As a result,
25 DEFENDANTS' failure to provide PLAINTIFF with the legally required meal periods is
26 evidenced by DEFENDANTS' business records. As a result of DEFENDANTS not accurately
27 recording all missed meal and rest periods and/or minimum and overtime wages due, the wage
28 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,

1 Labor Code Section 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all wages due
2 to him and DEFENDANTS have failed to pay any penalty wages owed to him under California
3 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
4 the sum or value of \$75,000.

5 JURISDICTION AND VENUE

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

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

16 THE CALIFORNIA CLASS

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

26 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

1 25. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

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

17 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
23 in place company policies, practices and procedures that uniformly and
24 systematically failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages owed and
26 overtime wages at the correct rate owed for work performed by these employees;

- 1 b. Committing an act of unfair competition in violation of the UCL, by failing to
2 provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
3 CLASS members;
- 4 c. Committing an act of unfair competition in violation of the California Unfair
5 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
6 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
7 members with necessary expenses incurred in the discharge of their job duties.

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

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

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

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

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

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

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

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

24 i. With respect to the First Cause of Action, the final relief on behalf of the
25 CALIFORNIA CLASS sought does not relate exclusively to restitution
26 because through this claim PLAINTIFF seeks declaratory relief holding
27 that the DEFENDANTS' policy and practices constitute unfair
28 competition, along with declaratory relief, injunctive relief, and incidental

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equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent

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employer, the Class Action is the only means to assert their claims through a representative; and

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
20 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who were employed by DEFENDANT ASSET GAS INCORPORATED,
22 and/or ASSET PROPERTY MANAGEMENT, and/or ASSET GAS, LLC, in California (the
23 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning April 6, 2017
24 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
25 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
26 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
27 (\$5,000,000.00).
28

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

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

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

20 37. 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 DEFENDANTS unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
24 pay for missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
28 statements

- 1 c. Whether DEFENDANTS has engaged in unfair competition by the above-listed
- 2 conduct;
- 3 d. The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and
- 5 e. Whether DEFENDANTS' conduct was willful.

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

- 8 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
- 9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
- 10 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
- 11 Lab. Code § 1194;
- 12 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 14 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 15 Cal. Lab. Code §§ 1194 and 1197;
- 16 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 17 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 18 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 19 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 21 statement in writing showing the corresponding correct amount of wages earned
- 22 by the employee;
- 23 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 24 CALIFORNIA CLASS members with necessary expenses incurred in the
- 25 discharge of their job duties; and
- 26 f. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 27 employee is discharged or quits from employment, the employer must pay the
- 28 employee all wages due without abatement, by failing to tender full payment

1 and/or restitution of wages owed or in the manner required by California law to
2 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
3 their employment.

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

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

1 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
2 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
3 Members.

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

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

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

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

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

25 c. Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
27 of California Law as listed above, and predominate over any question affecting
28 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient adjudication
2 of the controversy, including consideration of:

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

9 ii. Class certification will obviate the need for unduly duplicative litigation
10 that would 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
14 DEFENDANTS; and/or,

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

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

26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will obviate
28 the need for unduly and unnecessary duplicative litigation that is likely to

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result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

20 43. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

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

1 use or employment by any person of any practice which constitutes unfair competition, as
2 defined in this chapter, or as may be necessary to restore to any person in interest any
3 money or property, real or personal, which may have been acquired by means of such
4 unfair competition. (Cal. Bus. & Prof. Code § 17203).

5 45. By the conduct alleged herein, DEFENDANTS have engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
9 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
10 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
11 constitute unfair competition, including restitution of wages wrongfully withheld.

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

18 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
19 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
20 mandated meal and rest periods and the required amount of compensation for missed meal and
21 rest periods, and failed to pay minimum and overtime wages owed, and failed to reimburse all
22 necessary business expenses incurred, due to a systematic business practice that cannot be
23 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
24 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
25 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
26 restitution of wages wrongfully withheld.

27 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
28 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

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

3 49. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the

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

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

7 56. PLAINTIFF 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 of
9 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
10 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
11 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
12 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
13 unlawful and unfair business practices.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

22 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
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1 60. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.

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

6 62. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
7 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
8 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was
9 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS.

11 63. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
15 pay.

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

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

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

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

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

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

21 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
23 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
24 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA

1 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
2 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
3 CLASS Members are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

6 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

12 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
13 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
14 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these
15 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
16 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

26 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
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1 DEFENDANTS and were not paid for all the time they worked, including overtime work, and/or
2 at the correct overtime rate.

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

10 78. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
12 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANTS acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

16 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
18 the correct overtime compensation for their time worked for DEFENDANT.

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

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

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

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

17 84. DEFENDANTS knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
19 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
21 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
23 overtime wages for their overtime worked.

24 85. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all time worked and provide them with the requisite compensation, DEFENDANTS acted and
27 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

1 DEFENDANT for their meal periods. Additionally, DEFENDANTS' failure to provide
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
3 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
4 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members
5 with a second off-duty meal period in some workdays in which these employees were required by
6 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of
7 the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

21 **Defendants)**

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

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

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

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **(Cal. Lab. Code §§ 2802)**

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

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

25 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

26 An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her
28 duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful.

3 97. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
4 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for required expenses incurred in the discharge of their job duties for DEFENDANT’S
6 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
7 CLASS members for expenses which included, but were not limited to, costs related to using their
8 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
9 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
10 their personal cell phones for work-related business. DEFENDANT’S uniform policy, practice
11 and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
12 members for expenses resulting from using their personal cellular phones for DEFENDANTS
13 within the course and scope of their employment for DEFENDANT. These expenses were
14 necessary to complete their principal job duties. DEFENDANTS are estopped by
15 DEFENDANT’S conduct to assert any waiver of this expectation. Although these expenses were
16 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the
18 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
19 do under the laws and regulations of California.

20 98. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
21 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
22 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
23 at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 101. When DEFENDANTS did not accurately record PLAINTIFF's and other
2 CALIFORNIA CLASS Members' wages, did not pay the wages at the correct rate, and failed to
3 record and pay missed meal and rest breaks, DEFENDANTS violated Cal. Lab. Code § 226 in
4 that DEFENDANTS failed to provide an accurate wage statement in writing that properly and
5 accurately itemizes all missed meal and rest periods and wages owed to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the
7 correct wages earned by the employees. Additionally, the wage statements DEFENDANTS
8 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
9 Section 226(a) in that DEFENDANTS failed to correctly list the correct name(s) of the legal entity
10 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members.

11 102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
14 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
15 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
17 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
18 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
19 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
20 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
21 member of the CALIFORNIA LABOR SUB-CLASS herein).

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal. Lab. Code § 203)

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

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

104. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or her 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 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 mailing shall constitute the date of payment

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

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

5 108. Cal. Lab. Code § 203 provides:

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

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

14 110. 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, PLAINTIFF
16 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for
17 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
18 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory
19 costs as allowed by law.

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE SUITABLE SEATING**

22 **(Cal. Lab. Code §§1198 et seq. & California Code of Regulations, Title 8, Section 11070(14))**

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

24 111. PLAINTIFF, and the other AGGRIEVED EMPLOYEES, reallege and incorporate
25 by this reference, as though fully set forth herein, all paragraphs of this Complaint.

26 112. California Labor Code section 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable wage order.
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1 113. California Labor Code section 1198 requires that “. . . the standard conditions of
2 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
3 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.
4 California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working
5 employees shall be provided with suitable seats when the nature of the work reasonably permits the
6 use of seats.”

7 114. California Code of Regulations, Title 8, section 11070(14)(B) provides that
8 “[w]hen employees are not engaged in the active duties of their employment and the nature of the
9 work requires standing, an adequate number of suitable seats shall be placed in reasonable
10 proximity to the work area and employees shall be permitted to use such seats when it does not
11 interfere with the performance of their duties.”

12 115. DEFENDANTS violated California Labor Code section 1198 and California Code
13 of Regulations, Title 8, section 11070(14) because PLAINTIFF and AGGRIEVED
14 EMPLOYEES were not permitted to sit, even if they were not engaged in active duties. They
15 were not permitted to sit, even when it would not interfere with the performance of their duties,
16 nor were they provided with suitable seats.

17 116. PLAINTIFF and AGGRIEVED EMPLOYEES are entitled to recover all remedies
18 available for violations of California Labor Code section 1198 and California Code of
19 Regulations, Title 8, section 11070(14)

20 117. Pursuant to the civil penalties provided for in California Labor Code sections 2699
21 (f) and (g), the State of California, PLAINTIFF and other aggrieved employees are entitled to
22 recover civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
24 for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code
25 section 1198.

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1 **PRAYER FOR RELIEF**

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

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5 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

e. The wages of all terminated employees from the CALIFORNIA LABOR SUBCLASS 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.

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

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

DATED: May __, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: May __, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF