

SUMMONS (CITACION JUDICIAL) BY FAX

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CENTURY WILSHIRE, INC., a California Corporation; and DOES 1-50, Inclusive,

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

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

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE) CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles AUG 24 2020 Sherri R. Carter, Executive Officer/Clerk of Court By: Kristina Vargas, Deputy

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. 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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: (El nombre y dirección de la corte es): Los Angeles Superior Court, Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012

CASE NUMBER (Número del caso) 20STCV32613

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. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203 Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: (Fecha) AUG 24 2020 SHERRI R. CARTER Clerk, by (Secretario) Kristina Vargas, Deputy (Adjunto)

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

[SEAL]

- NOTICE TO THE PERSON SERVED: You are served 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):

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

AUG 24 2020

Shari R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

BY FAX

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

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

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 DAVID MARTINELLO, an individual, on
11 behalf of himself and on behalf of all persons
similarly situated,

12 Plaintiff,

13 v.

14 CENTURY WILSHIRE, INC., a California
15 Corporation; and DOES 1-50, Inclusive,

16 Defendants.

Case No: **20STCV32613**
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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351;
- 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq*.

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant CENTURY WILSHIRE, INC. (“Defendant” or “DEFENDANT”) is a
7 California Corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in California.

9 2. DEFENDANT, owns and operates two hotels in the County of Los Angeles in
10 California.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods June 2019 to
13 November 2019.

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

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

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

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANT'S control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended

1 when donning and doffing his uniforms. PLAINTIFF was often interrupted by work
2 assignments during his breaks. Indeed there were many days where PLAINTIFF did not even
3 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members, from time to time, forfeited minimum wage and overtime compensation by working
5 without their time being accurately recorded and without compensation at the applicable
6 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay
7 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
8 DEFENDANT'S business records.

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

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

26 11. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period each workday in which these employees were required by
5 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
6 CLASS Members therefore forfeited meal breaks without additional compensation and in
7 accordance with DEFENDANTS' strict corporate policy and practice

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

19 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
20 wages owed to them, and/or missed meal and rest breaks, DEFENDANT also failed to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
22 wage statements which failed to show, among other things, the time worked, including, work
23 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
24 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate
26 itemized wage statement in writing showing, among other things, gross wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28 worked at each hourly rate. Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 wage statements which violated Cal. Lab. Code § 226.

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

16 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
17 CLASS Members as a business expense, were required by DEFENDANT to use their own
18 personal cellular phones, and to clean their own uniforms, as a result of and in furtherance of
19 their job duties as employees for DEFENDANT but were not reimbursed or indemnified by
20 DEFENDANT for the cost associated with the use of their personal cellular phones and the
21 cleaning of their uniforms for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
22 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
23 phones to for work related issues, and were required to regularly clean their uniforms. As a
24 result, in the course of their employment with DEFENDANT the PLAINTIFF and other
25 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
26 included, but were not limited to, costs related to the use of their personal cellular phones and
27 the cleaning of their uniforms, all on behalf of and for the benefit of DEFENDANT.

28

1 16. During the CALIFORNIA CLASS period, pursuant to DEFENDANT’s company
2 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
3 forfeit gratuities left for them by customers to DEFENDANT’s agents who provided no service
4 to the customers that resulted in the gratuity. DEFENDANT routinely added gratuity tips and
5 service charges to its food and beverage banquet bills. These gratuities and service charges
6 reasonably appear to be gratuities for the service staff. It is typical and customary in the
7 hospitality industry that establishments impose gratuity charges on the food and beverage bill.
8 Thus, when customers paid these charges, it is reasonable for them to have believed they were
9 gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to
10 customers, and the custom in the food and beverage industry that gratuities are paid for food and
11 beverage service, customers paid these charges reasonably believing they were remitted to the
12 service staff. However, DEFENDANT has not remitted the total proceeds of these gratuities to
13 the non-managerial employees who serve the food and beverages. Instead, DEFENDANT has a
14 policy and practice of retaining for itself a portion of these gratuities and/or using a portion of
15 these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and
16 CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which
17 they are entitled to under California law

18 17. DEFENDANT is generally in the business of owning and operating a hotel that
19 includes a restaurant/banquet hall. In addition, DEFENDANT provides banquet services to
20 large groups, such as birthday parties and other banquet events. During the CALIFORNIA
21 CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were in the “chain
22 of service” and earned gratuities based on their service for their customers. However,
23 PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their
24 gratuities, which said gratuities were kept by DEFENDANT and their agents who were not in
25 the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA
26 CLASS Members contend that any gratuities kept by DEFENDANT were illegal and in
27 violation of California law because PLAINTIFF and other CALIFORNIA CLASS Members,
28 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

1 18. California Labor Code § 351 establishes the requirements for an employer
2 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
3 employees. California Labor Code § 351 expressly prohibits employers and their agents from
4 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e)
5 defines the term “gratuity” as including any money that has been paid or given or left for an
6 employee by a patron of a business over and above the actual amount due the business for
7 services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code
8 § 353 requires employers to keep accurate records of all gratuities they receive, directly or
9 indirectly.

10 19. Although tip pooling is not expressly prohibited by the Labor Code, employees
11 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
12 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
13 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
14 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
15 A148513 (Court of Appeals of California, First District, Division Two.).

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

27 21. Specifically as to PLAINTIFF’S pay, PLAINTIFF was from time to time unable
28 to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
5 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
6 corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the
7 overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab.
8 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
9 or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

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

20 21 **THE CALIFORNIA CLASS**

22
23 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who are or previously were employed by Defendant in California and classified as
27 non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and
28 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in

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

3 25. On April 6, 2020, due to the impact of the COVID-19 pandemic on California’s
4 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which
5 states that, “Notwithstanding any other law, the statutes of limitation for civil causes of action
6 are tolled from April 6, 2020, until 90 days after the Governor declare that the state of
7 emergency related COVID-19 pandemic is lifted.”

8 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
10 accordingly.

11 27. The California Legislature has commanded that “all wages... ..earned by any
12 person in any employment are due and payable twice during each calendar month, on days
13 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
14 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
15 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
16 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
17 however, is statutorily authorized to “establish exemptions from the requirement that an
18 overtime rate of compensation be paid... ..for executive, administrative, and professional
19 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
20 test of the exemption, [and] customarily and regularly exercises discretion and independent
21 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
22 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
23 qualify for exemption from the above requirements.

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

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

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

12 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all time worked at the applicable rate, as required by California Labor Code §§
15 204 and 510, *et seq.*

16 31. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
19 California law by:

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

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

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

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

9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
11 of the CALIFORNIA CLASS, was subjected to the uniform employment
12 practices of DEFENDANTS and was a non-exempt employee paid on an hourly
13 basis and paid additional non-discretionary incentive wages who was subjected
14 to the DEFENDANT’S practice and policy which failed to pay the correct rate of
15 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
16 CALIFORNIA CLASS and thereby systematically under pays overtime
17 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
18 injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

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

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the controversy,
4 including consideration of:

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

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

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

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

22 iii. In the context of wage litigation, because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

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

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 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 DEFENDANT; 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 DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 37. 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 classified as non-exempt employees (the "CALIFORNIA LABOR
22 SUB-CLASS") at any time during the period of April 6, 2017 and ending on the date as
23 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
24 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
25 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

26 38. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time
2 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
4 this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly
5 denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages in
6 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 19 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
20 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
21 violation of the California Labor Code and California regulations and the
22 applicable California Wage Order;
- 23 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
24 to overtime compensation for overtime worked under the overtime pay
25 requirements of California law;
- 26 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT failed to reimburse PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS for business expenses incurred in furtherance and for the benefit DEFENDANT's business;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

42. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the

1 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
2 Code § 1194 & § 1198;

3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
4 and the other members of the CALIFORNIA CLASS with all legally required
5 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
6 rest breaks;

7 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
9 statement in writing showing time worked at by the employee;

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

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

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

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

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

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
4 employee paid on an hourly basis and paid additional non-discretionary incentive
5 wages who was subjected to the DEFENDANT's practice and policy which
6 failed to pay the correct rate of overtime wages due to the CALIFORNIA
7 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
8 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
11 of misconduct engaged in by DEFENDANT; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
14 counsel who are competent and experienced in Class Action litigation. There are
15 no material conflicts between the claims of the representative PLAINTIFF and
16 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
17 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
18 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
19 Members.

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
25 the risk of:
- 26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA LABOR SUB-CLASS which would establish
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or

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

b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

46. 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
 - d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
 - e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

10 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

16 Any person who engages, has engaged, or proposes to engage in unfair competition may
17 be enjoined in any court of competent jurisdiction. The court may make such orders or
18 judgments, including the appointment of a receiver, as may be necessary to prevent the
19 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

20 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
21 engage in a business practice which violates California law, including but not limited to, the
22 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
23 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198,
24 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to
25 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
26 constitute unfair competition, including restitution of wages wrongfully withheld.

27 51. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
8 worked, and failed to provide the required amount of overtime compensation, pursuant to the
9 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
10 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
11 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
12 withheld.

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

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

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

25 56. PLAINTIFF further demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
27 was not timely provided as required by law.
28

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

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

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

8 63. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
9 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
10 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
11 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
12 Members.

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

15 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a wage less than
17 the minimum so fixed is unlawful.

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

20 67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
21 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
22 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
23 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS.

25 68. DEFENDANT'S uniform pattern of unlawful wage and hour practices
26 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
27 whole, as a result of implementing a uniform policy and practice that denies accurate
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
CLASS in regards to minimum wage pay.

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

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

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

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

19 73. DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
21 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
23 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
24 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
25 correct minimum wages for their time worked.

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

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

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

15 **THIRD CAUSE OF ACTION**

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

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

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

23 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
27 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
28 hours in any workweek.

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

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

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

11 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
13 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

21 83. In committing these violations of the California Labor Code, DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other
24 applicable laws and regulations.

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

28 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
from the overtime requirements of the law. None of these exemptions are applicable to
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
2 to a valid collective bargaining agreement that would preclude the causes of action contained
3 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
4 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
5 non-waivable rights provided by the State of California.

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

9 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
11 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
12 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
14 to accurately record and pay using the applicable overtime rate as evidenced by
15 DEFENDANT's business records and witnessed by employees.

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

22 89. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
24 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
26 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
27 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
28 applicable overtime rate.

90. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

1 all time worked and provide them with the requisite overtime compensation, DEFENDANT
2 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and
3 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
4 disregard for their legal rights, or the consequences to them, and with the despicable intent of
5 depriving them of their property and legal rights, and otherwise causing them injury in order to
6 increase company profits at the expense of these employees.

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

26 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
27 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
28 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS

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

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

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

18
19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

27 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
Further, these employees were denied their first rest periods of at least ten (10) minutes for some

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code § 226)**

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

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

24 101. Cal. Labor Code § 226 provides that an employer must furnish employees withan
25 "accurate itemized" statement in writing showing:

- 26 a. Gross wages earned;
- 27 b. Total hours worked by the employee, except for any employee whose
28 compensation is solely based on a salary and who is exempt from payment of

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

16 102. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
17 wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide
18 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
19 wage statements which failed to show, among other things, the correct time worked, including,
20 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
21 workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code §
22 226 provides that every employer shall furnish each of his or her employees with an accurate
23 itemized wage statement in writing showing, among other things, gross wages earned and all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate. Aside from the violations listed above in this paragraph,
26 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
27 requirements under California Labor Code 226 *et seq.* As a result, from time to time
28

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

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

14
15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

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

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

22 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
23 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,
24 to these employees who actually worked overtime, as required by law.

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

//

//

1 **EIGHTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

1 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
2 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
3 do under the laws and regulations of California.

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

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO PAY STATUTORY GRATUITIES**

10 **(Cal. Lab. Code § 351 et seq.)**

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

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

16 117. DEFENDANT's conduct, as set forth above, in failing to remit to non-
17 managerial service employees the total proceeds of gratuities added to banquet customers' bills
18 constitutes a violation of California Labor Code Section 351. This violation is enforceable
19 pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq.
20 DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
21 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
22 to the non-managerial service employees the total gratuities that were charged to customers.

23 118. As a proximate result of the aforementioned violations, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
25 proof at trial, including the loss of gratuities to which they were entitled and seek all wages
26 earned and due, interest, penalties, expenses and costs of suit.

27 //

28 //

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

3 123. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
6 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
7 failed to provide accurate itemized wage statements, (d) failed to pay gratuities, and (e) failed to
8 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
9 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
10 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199,
11 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties
12 as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed
13 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
14 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANTS' violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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

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

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

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

22 3. On behalf of the State of California and with respect to all AGGRIEVED
23 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004;

25 4. On all claims:

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

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

28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
and/or §2802.

DATED: August 17 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: August 17, 2020

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

June 10, 2020

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

Via Online Submission

CENTURY WILSHIRE, INC

c/o CATHERINE JOHNSON
9400 CULVER BLVD.
CULVER CITY CA 90232

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, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir / Madam:

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

Plaintiff was employed by Defendant in California from June 2019 to November 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, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, and with minimum and overtime wages for all time worked. Defendant further has a policy and practice of retaining for itself a portion of gratuities and/or using a portion of these gratuities to pay managers or other non-service employees. Therefore, from time to time, Defendant also failed to pay Plaintiff gratuities owed to him.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii)

details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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

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

Respectfully,



Shani O. Zakay
Attorney at Law

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

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

8 Attorneys for Plaintiff

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

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

14 Plaintiff,

15 v.

16 CENTURY WILSHIRE, INC., a California
Corporation; and DOES 1-50, Inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant CENTURY WILSHIRE, INC. (“Defendant” or “DEFENDANT”) is a
7 California Corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in California.

9 2. DEFENDANT, owns and operates two hotels in the County of Los Angeles in
10 California.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods June 2019 to
13 November 2019.

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

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

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

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANT'S control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended

1 when donning and doffing his uniforms. PLAINTIFF was often interrupted by work
2 assignments during his breaks. Indeed there were many days where PLAINTIFF did not even
3 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members, from time to time, forfeited minimum wage and overtime compensation by working
5 without their time being accurately recorded and without compensation at the applicable
6 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay
7 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
8 DEFENDANT'S business records.

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

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

26 11. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period each workday in which these employees were required by
5 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
6 CLASS Members therefore forfeited meal breaks without additional compensation and in
7 accordance with DEFENDANTS' strict corporate policy and practice

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

19 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
20 wages owed to them, and/or missed meal and rest breaks, DEFENDANT also failed to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
22 wage statements which failed to show, among other things, the time worked, including, work
23 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
24 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate
26 itemized wage statement in writing showing, among other things, gross wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28 worked at each hourly rate. Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 wage statements which violated Cal. Lab. Code § 226.

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

16 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
17 CLASS Members as a business expense, were required by DEFENDANT to use their own
18 personal cellular phones, and to clean their own uniforms, as a result of and in furtherance of
19 their job duties as employees for DEFENDANT but were not reimbursed or indemnified by
20 DEFENDANT for the cost associated with the use of their personal cellular phones and the
21 cleaning of their uniforms for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
22 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
23 phones to for work related issues, and were required to regularly clean their uniforms. As a
24 result, in the course of their employment with DEFENDANT the PLAINTIFF and other
25 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
26 included, but were not limited to, costs related to the use of their personal cellular phones and
27 the cleaning of their uniforms, all on behalf of and for the benefit of DEFENDANT.

28

1 16. During the CALIFORNIA CLASS period, pursuant to DEFENDANT’s company
2 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
3 forfeit gratuities left for them by customers to DEFENDANT’s agents who provided no service
4 to the customers that resulted in the gratuity. DEFENDANT routinely added gratuity tips and
5 service charges to its food and beverage banquet bills. These gratuities and service charges
6 reasonably appear to be gratuities for the service staff. It is typical and customary in the
7 hospitality industry that establishments impose gratuity charges on the food and beverage bill.
8 Thus, when customers paid these charges, it is reasonable for them to have believed they were
9 gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to
10 customers, and the custom in the food and beverage industry that gratuities are paid for food and
11 beverage service, customers paid these charges reasonably believing they were remitted to the
12 service staff. However, DEFENDANT has not remitted the total proceeds of these gratuities to
13 the non-managerial employees who serve the food and beverages. Instead, DEFENDANT has a
14 policy and practice of retaining for itself a portion of these gratuities and/or using a portion of
15 these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and
16 CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which
17 they are entitled to under California law

18 17. DEFENDANT is generally in the business of owning and operating a hotel that
19 includes a restaurant/banquet hall. In addition, DEFENDANT provides banquet services to
20 large groups, such as birthday parties and other banquet events. During the CALIFORNIA
21 CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were in the “chain
22 of service” and earned gratuities based on their service for their customers. However,
23 PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their
24 gratuities, which said gratuities were kept by DEFENDANT and their agents who were not in
25 the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA
26 CLASS Members contend that any gratuities kept by DEFENDANT were illegal and in
27 violation of California law because PLAINTIFF and other CALIFORNIA CLASS Members,
28 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

1 18. California Labor Code § 351 establishes the requirements for an employer
2 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
3 employees. California Labor Code § 351 expressly prohibits employers and their agents from
4 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e)
5 defines the term “gratuity” as including any money that has been paid or given or left for an
6 employee by a patron of a business over and above the actual amount due the business for
7 services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code
8 § 353 requires employers to keep accurate records of all gratuities they receive, directly or
9 indirectly.

10 19. Although tip pooling is not expressly prohibited by the Labor Code, employees
11 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
12 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
13 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
14 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
15 A148513 (Court of Appeals of California, First District, Division Two.).

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

27 21. Specifically as to PLAINTIFF’S pay, PLAINTIFF was from time to time unable
28 to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
5 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
6 corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the
7 overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab.
8 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
9 or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

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

20
21 **THE CALIFORNIA CLASS**

22
23 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who are or previously were employed by Defendant in California and classified as
27 non-exempt employees (the “CALIFORNIA CLASS”) at any time between April 6, 2016 and
28 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in

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

3 25. On April 6, 2020, due to the impact of the COVID-19 pandemic on California’s
4 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which
5 states that, “Notwithstanding any other law, the statutes of limitation for civil causes of action
6 are tolled from April 6, 2020, until 90 days after the Governor declare that the state of
7 emergency related COVID-19 pandemic is lifted.”

8 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
10 accordingly.

11 27. The California Legislature has commanded that “all wages... ..earned by any
12 person in any employment are due and payable twice during each calendar month, on days
13 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
14 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
15 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
16 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
17 however, is statutorily authorized to “establish exemptions from the requirement that an
18 overtime rate of compensation be paid... ..for executive, administrative, and professional
19 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
20 test of the exemption, [and] customarily and regularly exercises discretion and independent
21 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
22 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
23 qualify for exemption from the above requirements.

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

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

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

12 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all time worked at the applicable rate, as required by California Labor Code §§
15 204 and 510, *et seq.*

16 31. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
19 California law by:

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

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

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

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

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

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

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

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

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

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the controversy,
4 including consideration of:

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

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

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

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

22 iii. In the context of wage litigation, because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

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

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 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 DEFENDANT; 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 DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 37. 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 classified as non-exempt employees (the "CALIFORNIA LABOR
22 SUB-CLASS") at any time during the period of April 6, 2017 and ending on the date as
23 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
24 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
25 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

26 38. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time
2 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
4 this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly
5 denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages in
6 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 19 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
20 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
21 violation of the California Labor Code and California regulations and the
22 applicable California Wage Order;
- 23 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
24 to overtime compensation for overtime worked under the overtime pay
25 requirements of California law;
- 26 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- 1 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 e. Whether DEFENDANT failed to reimburse PLAINTIFF and other members of
- 5 the CALIFORNIA LABOR SUB-CLASS for business expenses incurred in
- 6 furtherance and for the benefit DEFENDANT's business;
- 7 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 8 conduct;
- 9 g. The proper measure of damages and penalties owed to the members of the
- 10 CALIFORNIA LABOR SUB-CLASS; and
- 11 h. Whether DEFENDANT's conduct was willful.

12 42. DEFENDANT, as a matter of company policy, practice and procedure, failed to
13 accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide
14 accurate records of the time worked by these employees. All of the CALIFORNIA LABOR
15 SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid
16 on an hourly basis by DEFENDANT according to uniform and systematic company procedures
17 as alleged herein above. This business practice was uniformly applied to each and every
18 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
19 conduct can be adjudicated on a class-wide basis.

20 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
21 under California law by:

- 22 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 23 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 24 the correct minimum wage pay for which DEFENDANT is liable pursuant to
- 25 Cal. Lab. Code §§ 1194 and 1197;
- 26 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
- 28

1 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
2 Code § 1194 & § 1198;

3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
4 and the other members of the CALIFORNIA CLASS with all legally required
5 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
6 rest breaks;

7 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
9 statement in writing showing time worked at by the employee;

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

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

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

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

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

1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
4 employee paid on an hourly basis and paid additional non-discretionary incentive
5 wages who was subjected to the DEFENDANT's practice and policy which
6 failed to pay the correct rate of overtime wages due to the CALIFORNIA
7 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
8 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
11 of misconduct engaged in by DEFENDANT; and

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

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

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

26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA LABOR SUB-CLASS which would establish
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or

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

b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

46. 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
 - d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
 - e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

10 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

16 Any person who engages, has engaged, or proposes to engage in unfair competition may
17 be enjoined in any court of competent jurisdiction. The court may make such orders or
18 judgments, including the appointment of a receiver, as may be necessary to prevent the
19 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

20 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
21 engage in a business practice which violates California law, including but not limited to, the
22 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
23 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198,
24 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to
25 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
26 constitute unfair competition, including restitution of wages wrongfully withheld.

27 51. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
8 worked, and failed to provide the required amount of overtime compensation, pursuant to the
9 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
10 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
11 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
12 withheld.

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

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

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

25 56. PLAINTIFF further demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
27 was not timely provided as required by law.
28

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

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

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

8 63. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
9 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
10 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
11 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
12 Members.

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

15 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a wage less than
17 the minimum so fixed is unlawful.

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

20 67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
21 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
22 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
23 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS.

25 68. DEFENDANT'S uniform pattern of unlawful wage and hour practices
26 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
27 whole, as a result of implementing a uniform policy and practice that denies accurate
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
CLASS in regards to minimum wage pay.

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

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

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

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

19 73. DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
21 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
23 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
24 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
25 correct minimum wages for their time worked.

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

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

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

15 **THIRD CAUSE OF ACTION**

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

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

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

23 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
27 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
28 hours in any workweek.

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

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

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

11 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
13 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

21 83. In committing these violations of the California Labor Code, DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other
24 applicable laws and regulations.

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

28 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
from the overtime requirements of the law. None of these exemptions are applicable to
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
2 to a valid collective bargaining agreement that would preclude the causes of action contained
3 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
4 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
5 non-waivable rights provided by the State of California.

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

9 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
11 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
12 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
14 to accurately record and pay using the applicable overtime rate as evidenced by
15 DEFENDANT's business records and witnessed by employees.

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

22 89. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
24 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
26 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
27 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
28 applicable overtime rate.

90. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

1 all time worked and provide them with the requisite overtime compensation, DEFENDANT
2 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and
3 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
4 disregard for their legal rights, or the consequences to them, and with the despicable intent of
5 depriving them of their property and legal rights, and otherwise causing them injury in order to
6 increase company profits at the expense of these employees.

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

26 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
27 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
28 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS

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

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

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

18
19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

27 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
Further, these employees were denied their first rest periods of at least ten (10) minutes for some

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code § 226)**

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

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

24 101. Cal. Labor Code § 226 provides that an employer must furnish employees withan
25 "accurate itemized" statement in writing showing:

- 26 a. Gross wages earned;
- 27 b. Total hours worked by the employee, except for any employee whose
28 compensation is solely based on a salary and who is exempt from payment of

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

16 102. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
17 wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide
18 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
19 wage statements which failed to show, among other things, the correct time worked, including,
20 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
21 workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code §
22 226 provides that every employer shall furnish each of his or her employees with an accurate
23 itemized wage statement in writing showing, among other things, gross wages earned and all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate. Aside from the violations listed above in this paragraph,
26 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
27 requirements under California Labor Code 226 *et seq.* As a result, from time to time
28

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

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

14
15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

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

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

22 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
23 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,
24 to these employees who actually worked overtime, as required by law.

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

//

//

1 **EIGHTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

1 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
2 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
3 do under the laws and regulations of California.

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

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO PAY STATUTORY GRATUITIES**

10 **(Cal. Lab. Code § 351 et seq.)**

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

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

16 117. DEFENDANT's conduct, as set forth above, in failing to remit to non-
17 managerial service employees the total proceeds of gratuities added to banquet customers' bills
18 constitutes a violation of California Labor Code Section 351. This violation is enforceable
19 pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq.
20 DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
21 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
22 to the non-managerial service employees the total gratuities that were charged to customers.

23 118. As a proximate result of the aforementioned violations, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
25 proof at trial, including the loss of gratuities to which they were entitled and seek all wages
26 earned and due, interest, penalties, expenses and costs of suit.

PRAYER FOR RELIEF

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

3
4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum wages, overtime compensation, gratuities, unreimbursed
21 expenses, and other compensation due PLAINTIFF and the other members of the
22 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 member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: June__ 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: June__, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff