

**SUMMONS
(CITACION JUDICIAL)**

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

HT MULTINATIONAL, INC., a California Corporation; CHTC (USA), INC., a California Corporation; HT INDUSTRIES, INC., a Corporation; and Does 1 through 50, Inclusive

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

JIE XU, individually and on behalf of all persons similarly situated

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 27 2020

BY Nicole Cartwright
NICOLE CARTWRIGHT, 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):

Superior Court of San Bernardino
247 W. Third Street
San Bernardino, CA 92415

CIVIL CASE NUMBER
(Número del Caso): 2015-679

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)

JUL 27 2020

Clerk, by Nicole Cartwright, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

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):

[SEAL]

COPY

VIA FAX

1 **JCL LAW FIRM**

2 Jean-Claude Lapuyade, Esq.
3 3990 Old Town Avenue, Suite C204
4 San Diego, CA 92110
5 Telephone: (619) 599-8292
6 Facsimile: (619) 599-8291
7 Website: www.jcl-lawfirm.com

8 **ZAKAY LAW GROUP, APLC**
9 Shani O. Zakay (State Bar #277924)
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11 San Diego, CA 92110
12 Telephone: (619)255-9047
13 Facsimile: (858) 404-9203
14 Website: www.zakaylaw.com

15 ATTORNEYS FOR PLAINTIFF JIE XU

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN BERNARDINO**

18 JIE XU, individually and on behalf of all
19 persons similarly situated

20 PLAINTIFFS,

21 vs.

22 HT MULTINATIONAL, INC., a California
23 Corporation; CHTC (USA), INC., a California
24 Corporation; HT INDUSTRIES, INC., a
25 Corporation; and Does 1 through 50, Inclusive,

26 DEFENDANTS.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 27 2020

BY 
NICOLE CARTWRIGHT, DEPUTY

Case No.: CIVDS 2015679

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq.;
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; and
8. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 et seq.]

[JURY TRIAL DEMANDED]

VIA FAX

1 Plaintiff JIE XU (“PLAINTIFF”), individually and on behalf of all those similarly situated,
2 allege on information and belief, except for their own acts and knowledge, the following:

3 **THE PARTIES**

4 1. Defendant HT MULTINATIONAL, INC. is a California Corporation based in
5 China, that at all relevant times relevant mentioned was in the business of importing and selling
6 buses throughout the United States, including in California.

7 2. Defendant CHTC (USA), INC. is a California Corporation based in China, which
8 at all relevant times relevant mentioned was in the business of importing and selling buses
9 throughout the United States, including in California.

10 3. Defendant HT INDUSTRIES, INC. is a Corporation based in China, which at all
11 relevant times relevant mentioned was in the business of importing and selling buses throughout
12 the United States, including in California. Defendants are collectively referred to herein as
13 “DEFENDANTS.”

14 4. Defendant HT MULTINATIONAL, INC., Defendant CHTC (USA), INC., and
15 Defendant HT INDUSTRIES, INC. were the joint employers of PLAINTIFF as evidenced by the
16 contracts signed and by the company the PLAINTIFF performed work for respectively, and are
17 therefore jointly responsible as employers for the conduct alleged herein and collectively referred
18 to herein as “DEFENDANTS”.

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

1 PLAINTIFF reserves the right to amend the following class definitions before the Court
2 determines whether class certification is appropriate, or thereafter upon leave of Court: All of
3 current and former exempt employees employed by Defendant HT MULTINATIONAL, INC.
4 and/or Defendant CHTC (USA), INC. and/or HT INDUSTRIES, INC. in California during the
5 CLASS PERIOD.

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

8 12. DEFENDANTS, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 willfully, engaged in a practice whereby DEFENDANT systematically misclassified PLAINTIFF
12 and other CALIFORNIA CLASS Members.

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

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

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

- a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically misclassified PLAINTIFF and the other members of the CALIFORNIA CLASS, and failed to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees;
- b. Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and
- c. Committing an act of unfair competition in violation of the UCL, by failing to separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for their rest breaks.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required

1 meal and rest periods to the CALIFORNIA CLASS and thereby
2 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of the
5 CALIFORNIA CLASS were and are similarly or identically harmed by the
6 same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and

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

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

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

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

25 ii. Adjudication with respect to individual members of the
26 CALIFORNIA CLASS which would as a practical matter be
27 dispositive of interests of the other members not party to the
28

1 adjudication or substantially impair or impede their ability to protect
2 their interests.

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

8 i. With respect to the First Cause of Action, the final relief on behalf of
9 the CALIFORNIA CLASS sought does not relate exclusively to
10 restitution because through this claim PLAINTIFF seeks declaratory
11 relief holding that the DEFENDANT's policy and practices constitute
12 unfair competition, along with declaratory relief, injunctive relief, and
13 incidental equitable relief as may be necessary to prevent and remedy
14 the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

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

25 a. The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual CALIFORNIA
27 CLASS Members because the DEFENDANT's employment practices were
28

1 uniform and systematically applied with respect to the CALIFORNIA
2 CLASS.

3 b. A Class Action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the members of the CALIFORNIA
5 CLASS because in the context of employment litigation a substantial number
6 of individual CALIFORNIA CLASS Members will avoid asserting their
7 rights individually out of fear of retaliation or adverse impact on their
8 employment;

9 c. The members of the CALIFORNIA CLASS are so numerous that it is
10 impractical to bring all members of the CALIFORNIA CLASS before the
11 Court;

12 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
13 to obtain effective and economic legal redress unless the action is maintained
14 as a Class Action;

15 e. There is a community of interest in obtaining appropriate legal and equitable
16 relief for the acts of unfair competition, statutory violations and other
17 improprieties, and in obtaining adequate compensation for the damages and
18 injuries which DEFENDANT's actions have inflicted upon the
19 CALIFORNIA CLASS;

20 f. There is a community of interest in ensuring that the combined assets of
21 DEFENDANT are sufficient to adequately compensate the members of the
22 CALIFORNIA CLASS for the injuries sustained;

23 g. DEFENDANT has acted or refused to act on grounds generally applicable to
24 the CALIFORNIA CLASS, thereby making final class-wide relief
25 appropriate with respect to the CALIFORNIA CLASS as a whole;

26 h. The members of the CALIFORNIA CLASS are readily ascertainable from
27 the business records of DEFENDANT; and
28

1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related
3 claims arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

5 19. DEFENDANT maintains records from which the Court can ascertain and identify
6 by job title each of DEFENDANT’s employees who as have been systematically, intentionally
7 and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein
8 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
9 of similarly situated employees when they have been identified.

10
11 **THE CALIFORNIA LABOR SUB-CLASS**

12 20. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, and Seventh
13 causes of Action on behalf of a California sub-class, defined as all members of the
14 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
15 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning April 6, 2017
16 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
17 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
18 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
19 (\$5,000,000.00).

20 21. DEFENDANTS, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly,
23 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT
24 misclassified non-exempt employees as exempt employees, and thereby failed to correctly
25 calculate compensation for the time worked by PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS and failed to provide them with California compliant
27 meal and rest periods. DEFENDANTS have uniformly denied these CALIFORNIA LABOR
28

1 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat
2 the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by
3 the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR
4 SUB-CLASS PERIOD should be adjusted accordingly.

5 22. DEFENDANTS maintain records from which the Court can ascertain and
6 identify by name and job title, each of DEFENDANTS' employees who have been
7 systematically, intentionally and uniformly subjected to DEFENDANTS' company policy,
8 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
9 to include these additional job titles when they have been identified.

10 23. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 14 a. Whether DEFENDANTS unlawfully misclassified non-exempt employees as
15 exempt employees, and thereby failed to correctly calculate and pay
16 compensation due to members of the CALIFORNIA LABOR SUB-CLASS
17 for minimum wages, overtime wages, missed meal and rest breaks in
18 violation of the California Labor Code and California regulations and the
19 applicable California Wage Order;
 - 20 b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
22 wage statements;
 - 23 c. Whether DEFENDANTS have engaged in unfair competition by the above-
24 listed conduct;
 - 25 d. The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and
 - 27 e. Whether DEFENDANTS' conduct was willful.
- 28

1 25. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
2 under California law by:

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

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

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

1 27. 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
3 that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 **THE CONDUCT**

19 29. To qualify as an exempt employee, California requires that an employee must be
20 “primarily engaged in the duties that meet the test of the exemption” and “earns a monthly salary
21 equivalent to no less than two times the state minimum wage for full-time employment.” *Labor*
22 *Code* § 515. This forms the two-part test the employers must establish to properly exempt its
23 employees from overtime laws: (1) the salary basis test and (2) the duties test.

24 30. For example, on January 1, 2019, the minimum wage in the State of California
25 increased to \$12.00 per hour for employers. Thus, based on a forty (40) hour workweek, the
26 minimum salary for California exempt employees employed by employers with at least twenty-
27 six (26) employees in 2019, is \$49,920.

1 31. From March 2019 to March 2020, DEFENDANTS employed PLAINTIFF in
2 various positions. Defendant improperly classified those positions as exempt from overtime laws
3 and other laws governing the employment of non-exempt employees.

4 32. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate
5 PLAINTIFF and the other members of the Class, with an annual salary of at least two times the
6 state minimum wage for full time employment by employers with at least twenty-six employees.
7 Specifically, PLAINTIFF earned an annual salary of \$42,000 well below the \$49,920 salary
8 threshold to meet the test of exemption.

9 33. At all times during the CLASS PERIOD, PLAINTIFF and the other members of
10 the Class primarily performed non-exempt job duties and were not primarily engaged in duties
11 that meet the test of the exemption, but were nevertheless classified by DEFENDANTS as
12 exempt. PLAINTIFF and the other members of the Class engaged in a finite set of tasks and had
13 no power to exercise any independent judgment and/or discretion. More specifically,
14 DEFENDANTS' policy, practice and procedure restrained PLAINTIFF and the other members
15 of the Class from evaluating possible courses of action and implementing decisions based on their
16 independent judgment and discretion. In other words, in exercising their duties, PLAINTIFF and
17 the other members of the Class lacked any power to make any independent choice free from
18 immediate supervision and with respect to matters of significance. PLAINTIFF and other
19 members of the Class did not exercise the requisite discretion or independent judgment in the
20 training or supervision of employees based on the constraints, direction and control imposed by
21 DEFENDANTS.

22 34. At all times during the CLASS PERIOD, PLAINTIFF and the members of the Class
23 did not did not have the authority to hire, fire, or promote employees, determine their pay rates or
24 benefits, or give raises, or otherwise make employment-related, personnel decisions.
25 Consequently, PLAINTIFF and the other members of the Class did not have the authority to
26 decide whether or not an employee should be disciplined for an infraction. Disciplinary decisions
27 were made by other departments, or dictated by company policies. Overall, recommendations
28 made by PLAINTIFF and the other members of the Class were given no weight on all the above

1 issues. As a result, as PLAINTIFF and the other members of the Class were engaged in a type of
2 work that required no exercise of independent judgment or discretion as to any matter of
3 significance. Moreover, PLAINTIFF and the other members of the class were engaged in a type
4 of work unrelated to management policies.

5 35. Further, the work schedule for PLAINTIFF and the other members of the Class,
6 were set by DEFENDANTS. Typically, PLAINTIFF and the other members of the Class,
7 regularly worked in excess of eight (8) hours in a workday and more than forty (40) hours in a
8 workweek. Nevertheless, DEFENDANTS never provided PLAINTIFF and the other members of
9 the Class with overtime compensation and other benefits for the overtime hours worked as
10 required by law due to DEFENDANTS' improper treatment.

11 36. As a matter of company policy, practice, and procedure, DEFENDANTS have
12 unlawfully, unfairly and/or deceptively treated its PLAINTIFF and the other members of the Class
13 as exempt employees, failed to pay the required overtime compensation and otherwise failed to
14 comply with all applicable labor laws with respect to PLAINTIFF and the other members of the
15 Class.

16 37. By reason of this uniform exemption practice, policy and procedure applicable to
17 the PLAINTIFF, DEFENDANTS committed acts of unfair competition in violation of the
18 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in
19 a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF
20 and the other members of the Class and thereby failed to pay them overtime wages for
21 documented overtime hours worked.

22 38. The proper classification of the PLAINTIFF and the other members of the Class is
23 DEFENDANTS' burden. DEFENDANTS had no business policy, practice, or procedure to
24 ensure that the PLAINTIFF and the other members of the Class were properly classified as
25 exempt, and in fact, as a matter of corporate policy erroneously and unilaterally classified
26 misclassified as exempt based on job title alone. As a result of DEFENDANTS' intentional
27 disregard of the obligation to meet this burden, DEFENDANTS failed to pay all required overtime
28

1 compensation for work performed by the PLAINTIFF and the other members of the Class and
2 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

3 39. Additionally, DEFENDANTS failed to provide all the legally required off-duty
4 meal and rest breaks to PLAINTIFF and the other members of the Class, as required by the
5 applicable Wage Order and Labor Code. As a result of its willful misclassification,
6 DEFENDANTS did not have a practice of providing meal and rest breaks to the PLAINTIFF and
7 the other members of the Class. DEFENDANTS' failure to provide the PLAINTIFF with legally
8 required meal and rest breaks is evidenced by DEFENDANTS' business records which contain
9 no record of these breaks.

10 40. To date, DEFENDANTS has not fully paid PLAINTIFF and the other CLASS
11 MEMBERS the overtime compensation still owed to them. The amount in controversy for
12 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

13 41. This action is appropriately suited for a Class Action because:

- 14 a. The potential class is a significant number. Joinder of all current and former
15 employees individually would be impractical.
- 16 b. This action involves common questions of law and fact to the potential Class
17 because the action focuses on DEFENDANTS' systematic course of
18 classification and illegal practices and policies, which was applied to all of the
19 members of the Class in violation of the Labor Code, the applicable IWC wage
20 order, and the Business and Professions Code which prohibits unfair business
21 practices arising from such violations.
- 22 c. The claims of the PLAINTIFF are typical of the class because DEFENDANTS
23 subjected all misclassified employees to identical violations of the Labor Code,
24 the applicable IWC wage order, and the Business and Professions Code.
- 25 d. PLAINTIFF is able to fairly and adequately protect the interest of all members
26 of the class because it is in their best interest to prosecute the claims alleged
27 herein to obtain full compensation due to them for all services rendered and
28 hours worked.

1
2 **JURISDICTION AND VENUE**

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

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

16 (By PLAINTIFF, the CALIFORNIA CLASS and Against All Defendants)

17 44. PLAINTIFF, and the other members of the Class (hereinafter “CALIFORNIA
18 CLASS”), reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

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

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

26 Any person who engages, has engaged, or proposes to engage in
27 unfair competition may be enjoined in any court of competent
28 jurisdiction. The court may make such orders or judgments,

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

7 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
8 engage in a business practice which violates California law, including but not limited to, the
9 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
10 Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 515, 558, 1194, 1197,
11 1197.1, 1198, and 1198.5 for which this Court should issue declaratory and other equitable relief
12 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
13 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

19 49. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
20 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
21 other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and
22 premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and
23 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
24 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
25 Code § 17203, including restitution of wages wrongfully withheld.

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

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

3 51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
4 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
5 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
6 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

7 52. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
8 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, all
9 unpaid wages from resulting from misclassification, one (1) hour of pay at the regular rate of
10 compensation for each workday in which an off-duty meal period was not timely provided for
11 each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-
12 duty meal period was not timely provided for each ten (10) hours of work.

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

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

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

27 56. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
28 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

3 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
6 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

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

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

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

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

18 59. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
19 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
20 members as required by the applicable Wage Order and Labor Code. The nature of the work
21 performed by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members did not
22 prevent these employees from being relieved of all of their duties for the legally required off-duty
23 meal periods. As a result of misclassification PLAINTIFF and other CALIFORNIA LABOR
24 SUB-CLASS members were often not fully relieved of duty by DEFENDANTS during their meal
25 periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA
26 LABOR SUB-CLASS members with legally required meal breaks prior to their fifth (5th) hour
27 of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other
28 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without

1 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
2 practice.

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

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

11
12 **THIRD CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

20 63. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS members were
21 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
22 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
23 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
24 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
25 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
26 PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour
27 wages in lieu thereof. As a result of their misclassification for the Misclassification Class,
28

1 PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper
2 rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

11 **FOURTH CAUSE OF ACTION**

12 **For Failure to Pay Minimum Wages**

13 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

15 **and Against All Defendants)**

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

19 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
21 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay
22 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for all hours worked
23 and, as a result, not paying minimum wages for all hours worked by PLAINTIFFS and
24 CALIFORNIA LABOR SUB-CLASS Members.

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

1 69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **For Failure to Pay Overtime Compensation**

6 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

23 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
24 including minimum wage and overtime compensation and interest thereon, together with the costs
25 of suit.

26 85. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
27 hours than those fixed by the Industrial Welfare Commission is unlawful.

1 86. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-
2 CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not
3 paid for all the time they worked, including overtime work.

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

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

17 89. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive full compensation for overtime worked.

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

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

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

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

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

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

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

4 96. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
5 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as
6 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
7 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or
8 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
9 members who have terminated their employment, DEFENDANTS' conduct also violates Labor
10 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
11 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
12 CALIFORNIA CLASS members. DEFENDANTS' 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 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 226]**

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

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

23 98. Cal. Labor Code § 226 provides that an employer must furnish employees with an
24 “accurate itemized” statement in writing showing:

- 25 1. gross wages earned,
- 26 2. total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28

1 overtime under subdivision (a) of Section 515 or any applicable order of the
2 Industrial Welfare Commission,

- 3 3. the number of piece rate units earned and any applicable piece rate if the
4 employee is paid on a piece-rate basis,
- 5 4. all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item,
- 7 5. net wages earned,
- 8 6. the inclusive dates of the period for which the employee is paid,
- 9 7. the name of the employee and her or her social security number, except that by
10 January 1, 2008, only the last four digits of her 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 8. the name and address of the legal entity that is the employer, and
- 14 9. 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 99. When PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
17 were not compensated for all wages due to them for their off-the-clock work, and for their missed
18 meal and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and
19 the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
20 statements. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
21 employees with an accurate itemized wage statement in writing showing, among other things,
22 gross wages earned and all applicable hourly rates in effect during the pay period and the
23 corresponding amount of time worked at each hourly rate. As a result, DEFENDANTS provided
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
25 statements which violate Cal. Lab. Code § 226. Aside, from the violations listed above in this
26 paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists
27 all the requirements under California Labor Code 226 *et seq.*

1 100. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
2 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
4 the correct rates for the overtime hours worked and the amount of employment taxes which were
5 not properly paid to state and federal tax authorities. These damages are difficult to estimate.
6 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
7 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
8 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
9 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
10 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
11 member of the CALIFORNIA LABOR SUB-CLASS.

12 **SEVENTH CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

20 102. Cal. Lab. Code § 200 provides, in relevant part, that:

21 As used in this article:

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

25 (b) "Labor" includes labor, work, or service whether rendered or performed under
26 contract, subcontract, partnership, station plan, or other agreement if the labor to be
27 paid for is performed personally by the person demanding payment.
28

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

4 104. Cal. Lab. Code § 202 provides, in relevant part, that: "If an employee not having a
5 written contract for a definite period quits his or her employment, his or her wages shall become
6 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
7 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
8 wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits
9 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
10 requests and designates a mailing address. The date of the mailing shall constitute the date of
11 payment for purposes of the requirement to provide payment within 72 hours of the notice of
12 quitting."

13 105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
14 CLASS Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that:
15 "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections
16 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages
17 of the employee shall continue as a penalty from the due date thereof at the same rate until paid
18 or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

19 106. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
20 Members has terminated and DEFENDANT has not tendered payment of all wages owed as
21 required by law.

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

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§ 2698 et seq.)**

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

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

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

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

22 104. On May 18, 2020, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific
24 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
25 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
27 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
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.

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

15
16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

20 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS
21 as a class action pursuant to Cal. Code of Civ. Proc. § 382;

22 B) An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

24 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
25 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
26 CLASS; and,

1 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for
2 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFFS
3 and to the other members of the CALIFORNIA CLASS.

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

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

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

13 c. Meal and rest period compensation pursuant to California Labor Code Section
14 226.7 and the applicable IWC Wage Order;

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

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

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

25 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004

27 4. On all claims:

28 A) An award of interest, including prejudgment interest at the legal rate;

- 1 B) Such other and further relief as the Court deems just and equitable; and,
- 2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
- 3 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

4 Dated: July 23, 2020

ZAKAY LAW GROUP, APC



6
7 Shani O. Zakay
8 Attorney for PLAINTIFF

9 **DEMAND FOR A JURY TRIAL**

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

11 DATED: July 23, 2020

ZAKAY LAW GROUP, APC



14 Shani O. Zakay
15 Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

May 18, 2020

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

HT MULTINATIONAL, INC
c/o MINGFENG LAI
21816 STONEPINE STREET
DIAMOND BAR CA 91765

CHTC (USA), INC
c/o MINGFENG LAI
21816 STONEPINE STREET
DIAMOND BAR CA 91765

HT INDUSTRIES, INC
15780 El Prado Rd
Chino, CA, 91708

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

Dear Sir/ Madam:

This office represents JIE XU (“Plaintiff”) and other aggrieved employees in an action against HT MULTINATIONAL, INC. CHTC (USA), INC. and HT INDUSTRIES, INC., (“Defendants”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from March 2019 to March 2020. Plaintiff was classified by Defendants as exempt, and was paid an annual salary of \$42,000. At all times during her employment, Defendants misclassified Plaintiff as an exempt employee. As a result of said misclassification, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

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

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 Defendants. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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

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

Respectfully,



Shani O. Zakay
Attorney at Law

1 **JCL LAW FIRM**

2 Jean-Claude Lapuyade, Esq.
3 3990 Old Town Avenue, Suite C204
4 San Diego, CA 92110
5 Telephone: (619) 599-8292
6 Facsimile: (619) 599-8291
7 Website: www.jcl-lawfirm.com

8 **ZAKAY LAW GROUP, APLC**

9 Shani O. Zakay (State Bar #277924)
10 3990 Old Town Ave., Suite C204
11 San Diego, CA 92110
12 Telephone: (619)255-9047
13 Facsimile: (858) 404-9203
14 Website: www.zakaylaw.com

15 ATTORNEYS FOR PLAINTIFF JIE XU

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN BERNARDINO**

18 JIE XU, individually and on behalf of all
19 persons similarly situated

20 PLAINTIFFS,

21 vs.

22 HT MULTINATIONAL, INC., a California
23 Corporation; CHTC (USA), INC., a California
24 Corporation; HT INDUSTRIES, INC., a
25 Corporation; and Does 1 through 50, Inclusive,

26 DEFENDANTS.

Case No.: _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq.;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

[JURY TRIAL DEMANDED]

1 Plaintiff JIE XU (“PLAINTIFF”), individually and on behalf of all those similarly situated,
2 allege on information and belief, except for their own acts and knowledge, the following:

3 **THE PARTIES**

4 1. Defendant HT MULTINATIONAL, INC. is a California Corporation based in
5 China, that at all relevant times relevant mentioned was in the business of importing and selling
6 buses throughout the United States, including in California.

7 2. Defendant CHTC (USA), INC. is a California Corporation based in China, which
8 at all relevant times relevant mentioned was in the business of importing and selling buses
9 throughout the United States, including in California.

10 3. Defendant HT INDUSTRIES, INC. is a Corporation based in China, which at all
11 relevant times relevant mentioned was in the business of importing and selling buses throughout
12 the United States, including in California. Defendants are collectively referred to herein as
13 “DEFENDANTS.”

14 4. Defendant HT MULTINATIONAL, INC., Defendant CHTC (USA), INC., and
15 Defendant HT INDUSTRIES, INC. were the joint employers of PLAINTIFF as evidenced by the
16 contracts signed and by the company the PLAINTIFF performed work for respectively, and are
17 therefore jointly responsible as employers for the conduct alleged herein and collectively referred
18 to herein as “DEFENDANTS”.

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

1 6. The agents, servants and/or employees of the DEFENDANTS and each of them
2 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
3 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
4 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
5 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
6 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for
7 the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants
8 and/or employees.

9 7. Plaintiff JIE XU ("PLAINTIFF" or "XU") worked for DEFENDANTS from
10 approximately March 2019 through March 2020. During that time period, XU worked as a senior
11 operations assistant, parts manager, senior operations assistant, and positions misclassified as an
12 exempt employee.

13 **JURISDICTION AND VENUE**

14 8. The Superior Court of the State of California has jurisdiction in this matter because
15 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
16 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
17 regularly conduct business in California. Further, no federal question is at issue because the claims
18 are based solely on California law.

19 9. Venue is proper in this judicial district and the County of San Bernardino,
20 California because DEFENDANTS maintains offices and facilities and transact business in the
21 County of San Bernardino, and because DEFENDANTS' illegal payroll policies and practices
22 which are the subject of this action were applied, at least in part, to residents of the County of San
23 Bernardino.

24 10. PLAINTIFF bring this class action under California Code of Civil Procedure § 382
25 on behalf of two classes of employees that worked for DEFENDANTS in California at any time
26 beginning April 6, 2016 and ending on the date as determined by the Court ("CLASS PERIOD").
27 The members of the classes are so numerous that joinder of all class members is impractical.
28 PLAINTIFF reserves the right to amend the following class definitions before the Court

1 determines whether class certification is appropriate, or thereafter upon leave of Court: All of
2 current and former exempt employees employed by Defendant HT MULTINATIONAL, INC.
3 and/or Defendant CHTC (USA), INC. and/or HT INDUSTRIES, INC. in California during the
4 CLASS PERIOD.

5 THE CONDUCT

6 9. To qualify as an exempt employee, California requires that an employee must be
7 “primarily engaged in the duties that meet the test of the exemption” and “earns a monthly salary
8 equivalent to no less than two times the state minimum wage for full-time employment.” *Labor*
9 *Code* § 515. This forms the two-part test the employers must establish to properly exempt its
10 employees from overtime laws: (1) the salary basis test and (2) the duties test.

11 10. For example, on January 1, 2019, the minimum wage in the State of California
12 increased to \$12.00 per hour for employers. Thus, based on a forty (40) hour workweek, the
13 minimum salary for California exempt employees employed by employers with at least twenty-
14 six (26) employees in 2019, is \$49,920.

15 11. From March 2019 to March 2020, DEFENDANTS employed PLAINTIFF in
16 various positions. Defendant improperly classified those positions as exempt from overtime laws
17 and other laws governing the employment of non-exempt employees.

18 12. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate
19 PLAINTIFF and the other members of the Class, with an annual salary of at least two times the
20 state minimum wage for full time employment by employers with at least twenty-six employees.
21 Specifically, PLAINTIFF earned an annual salary of \$42,000 well below the \$49,920 salary
22 threshold to meet the test of exemption.

23 13. At all times during the CLASS PERIOD, PLAINTIFF and the other members of
24 the Class primarily performed non-exempt job duties and were not primarily engaged in duties
25 that meet the test of the exemption, but were nevertheless classified by DEFENDANTS as
26 exempt. PLAINTIFF and the other members of the Class engaged in a finite set of tasks and had
27 no power to exercise any independent judgment and/or discretion. More specifically,
28 DEFENDANTS’ policy, practice and procedure restrained PLAINTIFF and the other members

1 of the Class from evaluating possible courses of action and implementing decisions based on their
2 independent judgment and discretion. In other words, in exercising their duties, PLAINTIFF and
3 the other members of the Class lacked any power to make any independent choice free from
4 immediate supervision and with respect to matters of significance. PLAINTIFF and other
5 members of the Class did not exercise the requisite discretion or independent judgment in the
6 training or supervision of employees based on the constraints, direction and control imposed by
7 DEFENDANTS.

8 14. At all times during the CLASS PERIOD, PLAINTIFF and the members of the Class
9 did not did not have the authority to hire, fire, or promote employees, determine their pay rates or
10 benefits, or give raises, or otherwise make employment-related, personnel decisions.
11 Consequently, PLAINTIFF and the other members of the Class did not have the authority to
12 decide whether or not an employee should be disciplined for an infraction. Disciplinary decisions
13 were made by other departments, or dictated by company policies. Overall, recommendations
14 made by PLAINTIFF and the other members of the Class were given no weight on all the above
15 issues. As a result, as PLAINTIFF and the other members of the Class were engaged in a type of
16 work that required no exercise of independent judgment or discretion as to any matter of
17 significance. Moreover, PLAINTIFF and the other members of the class were engaged in a type
18 of work unrelated to management policies.

19 15. Further, the work schedule for PLAINTIFF and the other members of the Class,
20 were set by DEFENDANTS. Typically, PLAINTIFF and the other members of the Class,
21 regularly worked in excess of eight (8) hours in a workday and more than forty (40) hours in a
22 workweek. Nevertheless, DEFENDANTS never provided PLAINTIFF and the other members of
23 the Class with overtime compensation and other benefits for the overtime hours worked as
24 required by law due to DEFENDANTS' improper treatment.

25 16. As a matter of company policy, practice, and procedure, DEFENDANTS have
26 unlawfully, unfairly and/or deceptively treated its PLAINTIFF and the other members of the Class
27 as exempt employees, failed to pay the required overtime compensation and otherwise failed to
28

1 comply with all applicable labor laws with respect to PLAINTIFF and the other members of the
2 Class.

3 17. By reason of this uniform exemption practice, policy and procedure applicable to
4 the PLAINTIFF, DEFENDANTS committed acts of unfair competition in violation of the
5 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in
6 a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF
7 and the other members of the Class and thereby failed to pay them overtime wages for
8 documented overtime hours worked.

9 18. The proper classification of the PLAINTIFF and the other members of the Class is
10 DEFENDANTS' burden. DEFENDANTS had no business policy, practice, or procedure to
11 ensure that the PLAINTIFF and the other members of the Class were properly classified as
12 exempt, and in fact, as a matter of corporate policy erroneously and unilaterally classified
13 misclassified as exempt based on job title alone. As a result of DEFENDANTS' intentional
14 disregard of the obligation to meet this burden, DEFENDANTS failed to pay all required overtime
15 compensation for work performed by the PLAINTIFF and the other members of the Class and
16 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

17 19. Additionally, DEFENDANTS failed to provide all the legally required off-duty
18 meal and rest breaks to PLAINTIFF and the other members of the Class, as required by the
19 applicable Wage Order and Labor Code. As a result of its willful misclassification,
20 DEFENDANTS did not have a practice of providing meal and rest breaks to the PLAINTIFF and
21 the other members of the Class. DEFENDANTS' failure to provide the PLAINTIFF with legally
22 required meal and rest breaks is evidenced by DEFENDANTS' business records which contain
23 no record of these breaks.

24 20. To date, DEFENDANTS has not fully paid PLAINTIFF and the other CLASS
25 MEMBERS the overtime compensation still owed to them. The amount in controversy for
26 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

27 21. This action is appropriately suited for a Class Action because:
28

- 1 a. The potential class is a significant number. Joinder of all current and former
2 employees individually would be impractical.
- 3 b. This action involves common questions of law and fact to the potential Class
4 because the action focuses on DEFENDANTS' systematic course of classification
5 and illegal practices and policies, which was applied to all of the members of the
6 Class in violation of the Labor Code, the applicable IWC wage order, and the
7 Business and Professions Code which prohibits unfair business practices arising
8 from such violations.
- 9 c. The claims of the PLAINTIFF are typical of the class because DEFENDANTS
10 subjected all misclassified employees to identical violations of the Labor Code, the
11 applicable IWC wage order, and the Business and Professions Code.
- 12 d. PLAINTIFF is able to fairly and adequately protect the interest of all members of
13 the class because it is in their best interest to prosecute the claims alleged herein to
14 obtain full compensation due to them for all services rendered and hours worked.

15 **JURISDICTION AND VENUE**

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

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

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1 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
2 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

3 28. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
4 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous
5 or substantially injurious to employees, and were without valid justification or utility for which
6 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
7 Business & Professions Code, including restitution of wages wrongfully withheld.

8 29. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
9 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
10 other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and
11 premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and
12 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
13 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
14 Code § 17203, including restitution of wages wrongfully withheld.

15 30. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
16 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANTS.

19 31. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
20 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
21 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
22 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

23 32. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
24 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, all
25 unpaid wages from resulting from misclassification, one (1) hour of pay at the regular rate of
26 compensation for each workday in which an off-duty meal period was not timely provided for
27 each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-
28 duty meal period was not timely provided for each ten (10) hours of work.

1 33. PLAINTIFF further demands on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided and/or paid as required by law.

4 34. By and through the unlawful and unfair business practices described herein,
5 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for time worked, including
7 overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and
8 contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to
9 allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

8 39. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
9 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as
10 required by the applicable Wage Order and Labor Code. The nature of the work performed by
11 PLAINTIFF and the CALIFORNIA CLASS members did not prevent these employees from
12 being relieved of all of their duties for the legally required off-duty meal periods. As a result of
13 misclassification in the case the Misclassification Class, PLAINTIFF and other CALIFORNIA
14 CLASS members were often not fully relieved of duty by DEFENDANTS during their meal
15 periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA
16 CLASS members with legally required meal breaks prior to their fifth (5th) hour of work is
17 evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of
18 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and
19 in accordance with DEFENDANTS' strict corporate policy and practice.

20 40. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
21 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
22 who were not provided a meal period, in accordance with the applicable Wage Order, one
23 additional hour of compensation at each employee's regular rate of pay for each workday that a
24 meal period was not provided.

25 41. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
27 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1 **THIRD CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

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

18 44. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
19 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
20 who were not provided a rest period, in accordance with the applicable Wage Order, one
21 additional hour of compensation at each employee's regular rate of pay for each workday that rest
22 period was not provided.

23 45. As a proximate result of the aforementioned violations, PLAINTIFF and
24 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial,
25 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

9 54. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
11 minimum wage compensation for their time worked for DEFENDANTS.

12 55. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
14 failure to pay all earned wages.

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

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

27 58. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

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

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

18 **FIFTH CAUSE OF ACTION**

19 **For Failure to Pay Overtime Compensation**

20 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

26 61. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees

1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
2 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

12 65. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
13 hours than those fixed by the Industrial Welfare Commission is unlawful.

14 66. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
16 they worked, including overtime work.

17 67. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
18 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
19 implementing a uniform policy and practice that failed to accurately record overtime worked by
20 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
22 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
23 (12) hours in a workday, and/or forty (40) hours in any workweek.

24 68. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
27 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
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1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

3 69. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
5 compensation for overtime worked.

6 70. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
7 from the overtime requirements of the law. None of these exemptions are applicable to the
8 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
10 agreement that would preclude the causes of action contained herein this Complaint. Rather,
11 PLAINTIFF brings this action on behalf of herself and the CALIFORNIA CLASS based on
12 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
13 California.

14 71. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
16 constituting a failure to pay all earned wages.

17 72. DEFENDANTS failed to accurately pay the PLAINTIFFS and the other members
18 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
19 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
20 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
21 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
22 evidenced by DEFENDANTS' business records and witnessed by employees.

23 73. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
24 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
25 amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 have suffered and will continue to suffer an economic injury in amounts which are presently
27 unknown to them and which will be ascertained according to proof at trial.

1 74. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

7 75. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
9 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
10 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal
12 rights, or the consequences to them, and with the despicable intent of depriving them of their
13 property and legal rights, and otherwise causing them injury in order to increase company profits
14 at the expense of these employees.

15 76. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
16 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
17 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
18 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
19 compensation is determined to be owed to the CALIFORNIA CLASS members who have
20 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
21 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
22 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
23 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
24 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
25 recover statutory costs.

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1 79. When PLAINTIFF and the other CALIFORNIA CLASS members were not
2 compensated for all wages due to them for their off-the-clock work, and for their missed meal
3 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
5 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
6 accurate itemized wage statement in writing showing, among other things, gross wages earned
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
10 226. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to
11 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
12 Code 226 *et seq.*

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

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1 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
2 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of
3 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
4 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

5 86. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 87. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
9 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
10 termination for all employees who terminated employment during the CALIFORNIA CLASS
11 PERIOD and demands an accounting and payment of all wages due, plus interest and statutory
12 costs as allowed by law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
15 severally, as follows:

16 On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes
18 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code
19 of Civ. Proc. § 382;
- 20 B) An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 22 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
23 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
24 CLASS; and,
- 25 D) Restitutionary disgorgement of DEFENDANTS’ ill-gotten gains into a fluid fund for
26 restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFFS
27 and to the other members of the CALIFORNIA CLASS.

- 1 E) Compensatory damages, according to proof at trial, including compensatory damages
2 for minimum and overtime compensation due PLAINTIFFS and the other members of
3 the CALIFORNIA CLASS, during the applicable CALIFORNIA LABOR SUB-
4 CLASS PERIOD plus interest thereon at the statutory rate;
- 5 F) Meal and rest period compensation pursuant to California Labor Code Section 226.7
6 and the applicable IWC Wage Order;
- 7 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
8 a violation occurs and one hundred dollars (\$100) per each member of the
9 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
10 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
11 of Cal. Lab. Code § 226;
- 12 H) The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
13 from the due date thereof at the same rate until paid or until an action therefore is
14 commenced, in accordance with Cal. Lab. Code § 203.

15 On all claims:

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

20 Dated: May __, 2020

ZAKAY LAW GROUP, APC

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Shani O. Zakay
Attorney for PLAINTIFF