

**SUMMONS
(CITACION JUDICIAL)**

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

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

HYDRITE CHEMICAL CO., a Wisconsin Corporation; and DOES 1-50, Inclusive,

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

ROBERT BENITEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

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):
Tulare Superior Court, Visalia Courthouse
221 S. Mooney Blvd.
Visalia, CA 93291

CASE NUMBER:
(Número del Caso): **VCU285490**

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):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

J. Ochoa Jessica Ochoa
, Deputy
(Adjunto)

DATE: **01/06/2021**
(Fecha) Clerk, by Stephanie Cameron (Secretario)

(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):

David Mathias

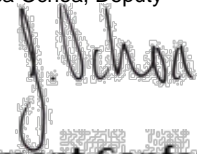
For All Purposes

ELECTRONICALLY FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

01/06/2021

STEPHANIE CAMERON, CLERK
Jessica Ochoa, Deputy



Case Management Conference

05/11/2021 08:30 AM - Department 01

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE**

ROBERT BENITEZ, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

HYDRITE CHEMICAL CO., a Wisconsin
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: VCU285490

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant HYDRITE CHEMICAL CO. (“Defendant” or “DEFENDANT”) is a
6 Wisconsin Corporation and at all relevant times mentioned herein conducted and continues to
7 conduct substantial and regular business in California.

8 2. DEFENDANT is one of the largest providers of chemicals and related services in
9 the United States.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from September
12 2018 to May 2020. PLAINTIFF was at all times relevant mentioned herein classified by
13 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
14 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by Defendant in California and
17 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four years prior to the filing of the Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

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

1 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
2 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
3 who have been economically injured by DEFENDANT's past and current unlawful conduct,
4 and all other appropriate legal and equitable relief.

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

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

22 **THE CONDUCT**

23 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
24 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
25 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
26 accurately calculate wages for overtime worked by PLAINTIFF and other members of the
27 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
28 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS

1 forfeited wages due them for working overtime without compensation at the correct overtime
2 rates. DEFENDANT's uniform policy and practice to not pay the members of the
3 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
4 applicable law is evidenced by DEFENDANT's business records.

5 9. State law provides that employees must be paid overtime at one-and-one-
6 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
7 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

9 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
10 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
11 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages, as well as, from time
12 to time, shift differential wages. The non-discretionary incentive program provided all
13 employees paid on an hourly basis with incentive compensation. However, when calculating the
14 regular rate of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS
15 Members, DEFENDANT failed to include the incentive compensation as part of the employees'
16 "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors
17 described the incentive program to potential and new employees as part of the compensation
18 package. As a matter of law, the incentive compensation received by PLAINTIFF and other
19 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to
20 do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and
21 other CALIFORNIA CLASS Members by DEFENDANT.

22 11. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
26 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
27 intended to purposefully avoid the payment of the correct overtime compensation as required by
28 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage

1 over competitors who complied with the law. To the extent equitable tolling operates to toll
2 claims by the CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS
3 PERIOD should be adjusted accordingly.

4 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
5 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
6 worked, meaning the time during which an employee is subject to the control of an employer,
7 including all the time the employee is suffered or permitted to work. From time to time,
8 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
9 paying them for all the time they were under DEFENDANT'S control. Specifically,
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
11 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended.
12 PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were
13 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF
14 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and
15 overtime compensation by working without their time being accurately recorded and without
16 compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform
17 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
18 time worked is evidenced by DEFENDANT'S business records.

19 13. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
21 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
22 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
23 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
24 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
25 second off-duty meal period each workday in which these employees were required by
26 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
27 CLASS Members therefore forfeited meal breaks without additional compensation and in
28 accordance with DEFENDANTS' strict corporate policy and practice. Even when provided

1 with meal periods, PLAINTIFF was required by DEFENDANT to stay on the premises and/or
2 on duty and/or on call, and to carry a radio and respond to inquiries from DEFENDANT.

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

16 15. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
17 in the same pay period they earned incentive wages, DEFENDANT also failed to provide
18 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
19 wage statements which failed to show, among other things, the correct overtime rate for
20 overtime worked, including, work performed in excess of eight (8) hours in a workday and/or
21 forty (40) hours in any workweek. Cal. Lab. Code § 226 provides that every employer shall
22 furnish each of his or her employees with an accurate itemized wage statement in writing
23 showing, among other things, gross wages earned and all applicable hourly rates in effect during
24 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
25 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*,
27 including the accurate number of total hours worked in every pay period. As a result, from time
28

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

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

14 17. At all times relevant, Plaintiff and the CALIFORNIA CLASS were subject to an
15 employer policy and/or contract of employment that provided for paid vacations not otherwise
16 provided by a collective-bargaining agreement. Upon Plaintiff’s and the CALIFORNIA
17 CLASS’ separation of employment, they had not used all of their vested vacation and thus their
18 unused, vested vacation was required to have been paid at their final rate upon separation of
19 employment, and at their regular rate of pay. As a result of the miscalculation of regular rate
20 described herein, DEFENDANT violated Labor Code §227.3.

21 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
22 her in the form of two components. One component of PLAINTIFF’S compensation was a base
23 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
24 incentive wages. During these pay periods in which PLAINTIFF was paid the non-discretionary
25 incentive wages by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but
26 DEFENDANT never included the incentive compensation in PLAINTIFF’S regular rate of pay
27 for the purposes of calculating what should have been PLAINTIFF’S accurate overtime rate and
28 thereby underpaid PLAINTIFF for overtime worked throughout her employment with

1 DEFENDANT. The incentive compensation paid by DEFENDANT constituted wages within
2 the meaning of the California Labor Code and thereby should have been part of PLAINTIFF’S
3 “regular rate of pay.” PLAINTIFF was also from time to time unable to take off duty meal and
4 rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required to
5 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
6 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
7 second off-duty meal period each workday in which he was required by DEFENDANT to work
8 ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
9 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.
10 DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately display
11 PLAINTIFF’s employer name and address, and the correct rates of overtime pay and payments
12 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
13 To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to
14 him or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy
15 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

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27 ///
28

THE CALIFORNIA CLASS

1
2 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
5 individuals who are or previously were employed by Defendant in California and classified as
6 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
7 April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS
8 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
9 Members is under five million dollars (\$5,000,000.00).

10 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

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

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
2 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
3 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
4 work, required employees to perform this work and permitted or suffered to permit this
5 overtime work.

6 25. DEFENDANT have the legal burden to establish that each and every
7 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
8 accurately calculate the “regular rate of pay” by including the incentive compensation that
9 PLAINTIFF and members of the CALIFORNIA CLASS were paid by DEFENDANT.
10 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
11 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
12 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
13 overtime rate for all overtime worked, so as to satisfy their burden. This common business
14 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
15 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
16 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
17 claim.

18 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

25 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
2 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that failed to pay all wages due the
4 CALIFORNIA CLASS for all minimum wages and overtime worked, and failed
5 to accurately record the applicable rates of all overtime worked by the
6 CALIFORNIA CLASS;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
9 unfairly, and/or deceptively having in place a company policy, practice and
10 procedure that failed to correctly calculate overtime compensation due to
11 PLAINTIFF and the members of the CALIFORNIA CLASS; and
- 12 c. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
14 provide mandatory meal and/or rest breaks to PLAINTIFF and the
15 CALIFORNIA CLASS members;

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

- 18 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
19 joinder of all such persons is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA CLASS will apply
23 uniformly to every member of the CALIFORNIA CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each
25 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
26 of the CALIFORNIA CLASS, was subjected to the uniform employment
27 practices of DEFENDANTS and was a non-exempt employee paid on an hourly
28 basis and paid additional non-discretionary incentive wages who was subjected

1 to the DEFENDANT’S practice and policy which failed to pay the correct rate of
2 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
3 CALIFORNIA CLASS and thereby systematically under pays overtime
4 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
5 injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the
6 members of the CALIFORNIA CLASS were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
8 misconduct engaged in by DEFENDANT; and

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

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

- 18 a. Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA CLASS will create the risk of:
- 21 i. Inconsistent or varying adjudications with respect to individual members
22 of the CALIFORNIA CLASS which would establish incompatible
23 standards of conduct for the parties opposing the CALIFORNIA CLASS;
24 and/or;
 - 25 ii. Adjudication with respect to individual members of the CALIFORNIA
26 CLASS which would as a practical matter be dispositive of interests of
27 the other members not party to the adjudication or substantially impair or
28 impede their ability to protect their interests.

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

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

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

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

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

- 1 CALIFORNIA CLASS Members will avoid asserting their rights individually
2 out of fear of retaliation or adverse impact on their employment;
- 3 c. The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 5 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
6 obtain effective and economic legal redress unless the action is maintained as a
7 Class Action;
- 8 e. There is a community of interest in obtaining appropriate legal and equitable
9 relief for the acts of unfair competition, statutory violations and other
10 improprieties, and in obtaining adequate compensation for the damages and
11 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
12 CLASS;
- 13 f. There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of the
15 CALIFORNIA CLASS for the injuries sustained;
- 16 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
17 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
18 respect to the CALIFORNIA CLASS as a whole;
- 19 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
20 business records of DEFENDANT; and
- 21 i. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims
23 arising out of the conduct of DEFENDANT as to the members of the
24 CALIFORNIA CLASS.

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

3 **THE CALIFORNIA LABOR SUB-CLASS**

4 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
5 causes of Action on behalf of a California sub-class, defined as all members of the
6 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
7 SUB-CLASS”) at any time during the period beginning April 6, 2017 and ending on the date as
8 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
9 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
10 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

11 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
12 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and
14 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
15 compensation for the overtime worked by PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
17 work, required employees to perform this work and permitted or suffered to permit this
18 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
19 CLASS Members minimum and overtime wages at the correct amount to which these
20 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
21 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
22 against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
23 accordingly.

24 35. DEFENDANT maintains records from which the Court can ascertain and
25 identify by name and job title, each of DEFENDANT’s employees who have been
26 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
27 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
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1 to include any additional job titles of similarly situated employees when they have been
2 identified.

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

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

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
8 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
9 violation of the California Labor Code and California regulations and the
10 applicable California Wage Order;
 - 11 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
12 to overtime compensation for overtime worked under the overtime pay
13 requirements of California law;
 - 14 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
15 for all overtime worked PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS;
 - 17 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA LABOR SUB-CLASS with legally required off-duty
19 uninterrupted thirty (30) minute meal breaks and rest periods;
 - 20 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
22 statements;
 - 23 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
24 conduct;
 - 25 g. The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and
 - 27 h. Whether DEFENDANT's conduct was willful.
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1 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
2 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
3 Members and failed to provide accurate records of the applicable overtime rates for the
4 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
5 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
6 basis by DEFENDANT according to uniform and systematic company procedures as alleged
7 herein above. This business practice was uniformly applied to each and every member of the
8 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
9 adjudicated on a class-wide basis.

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

- 12 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
14 the correct minimum wage pay for which DEFENDANT is liable pursuant to
15 Cal. Lab. Code §§ 1194 and 1197;
- 16 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
18 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
19 Code § 1194 & § 1198;
- 20 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
21 and the other members of the CALIFORNIA CLASS with all legally required
22 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
23 rest breaks;
- 24 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
26 statement in writing showing the name and address of PLAINTIFF's employer,
27 and all accurate and applicable overtime rates in effect during the pay period and
28 the corresponding amount of time worked at each overtime rate by the employee;

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

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members 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 LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT’s practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and

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

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

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

15 i. Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA LABOR SUB-CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

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

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

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

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

27 iii. In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid

1 asserting their legal rights out of fear of retaliation by DEFENDANT,
2 which may adversely affect an individual’s job with DEFENDANT or
3 with a subsequent employer, the Class Action is the only means to assert
4 their claims through a representative; and,

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

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

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

- 1 improprieties, and in obtaining adequate compensation for the damages and
2 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
3 LABOR SUB-CLASS;
- 4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 7 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
8 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 10 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
12 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
13 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
14 PERIOD; and
- 15 i. Class treatment provides manageable judicial treatment calculated to bring an
16 efficient and rapid conclusion to all litigation of all wage and hour related claims
17 arising out of the conduct of DEFENDANT as to the members of the
18 CALIFORNIA LABOR SUB-CLASS.

19
20 **FIRST CAUSE OF ACTION**

21 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

27 44. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
28 Code § 17021.

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

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

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

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

22 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
25 worked, failed to accurately to record the applicable rate of all overtime worked, and failed to
26 provide the required amount of overtime compensation due to a systematic miscalculation of the
27 overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
28 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for

1 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
2 § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

17
18 **SECOND CAUSE OF ACTION**

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to

1 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
2 Members.

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

5 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a wage less than
7 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

25 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
27 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
28 the California Labor Code and/or other applicable statutes. To the extent minimum wage
compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§

1 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
2 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA
3 LABOR SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful,
4 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
5 CLASS Members are entitled to seek and recover statutory costs.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

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

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

27 76. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
28 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.

1 Code § 1198 further states that the employment of an employee for longer hours than those
2 fixed by the Industrial Welfare Commission is unlawful.

3 77. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of overtime worked and correct applicable overtime rate for the amount of overtime
6 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
9 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
10 all overtime worked.

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

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

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

26 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

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

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

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

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

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

16
17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

14
15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

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

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

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

- 25 a. Gross wages earned;
- 26 b. 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 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

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

14 98. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
15 in the same pay period they earned incentive wages, DEFENDANT also failed to provide
16 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
17 wage statements which failed to show, among other things, the correct overtime rate for
18 overtime worked, including, work performed in excess of eight (8) hours in a workday and/or
19 forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest
20 periods. 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. Aside from the violations listed
24 above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage
25 statement that lists all the requirements under California Labor Code 226 *et seq.*, including the
26 total number of hours worked. As a result, from time to time DEFENDANT provided
27 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
28 violated Cal. Lab. Code § 226.

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

12
13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

11 104. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
12 SUB-CLASS Members’ employment contract.

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

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
16 who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 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-
20 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,
21 to these employees who actually worked overtime, as 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, PLAINTIFF
24 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
25 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
27 costs as allowed by law.

28 **EIGHTH CAUSE OF ACTION**

**FAILURE TO PAY VACATION WAGES
(Alleged by PLAINTIFF against all Defendants)**

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

1 109. At all relevant times, California Labor Code §227.3 provides for the following:

2 Unless otherwise provided by a collective-bargaining agreement, whenever a
3 contract of employment or employer policy provides for paid vacations, and an
4 employee is terminated without having taken off his vested vacation time, all
5 vested vacation shall be paid to him as wages at his final rate in accordance with
6 such contract of employment or employer policy respecting eligibility or time
7 served; provided, however, that an employment contract or employer policy shall
8 not provide for forfeiture of vested vacation time upon termination. The Labor
9 Commissioner or a designated representative, in the resolution of any
10 dispute with regard to the principles of equity and fairness.

11 110. At all times relevant, Plaintiff and the CALIFORNIA CLASS were subject to an
12 employer policy and/or contract of employment that provided for paid vacations not otherwise
13 provided by a collective-bargaining agreement. Upon Plaintiff's and the CALIFORNIA CLASS'
14 separation of employment, they had not used all of their vested vacation and thus their unused,
15 vested vacation was required to have been paid at their final rate upon separation of employment,
16 and at their regular rate of pay. As a result of the miscalculation of regular rate described herein,
17 DEFENDANT violated Labor Code §227.3.

18 111. Plaintiffs seeks, on their behalf and on behalf of the Vacation Subclass, all
19 damages and remedies available under California Labor Code §227.3, including payment of the
20 vacation wages at the final rate.

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

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

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

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

26 113. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
28 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
fundamentally a law enforcement action designed to protect the public and not to benefit private
parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In

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

5 114. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by DEFENDANT and
9 classified as non-exempt employees in California during the time period of November 2, 2019,
10 until the present (the "AGGRIEVED EMPLOYEES").

11 115. On November 2, 2020, PLAINTIFF gave written notice by certified mail to the
12 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
13 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
14 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
15 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
16 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
17 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 116. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
21 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
22 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
23 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
24 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
25 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
26 226.3, 226.7, 510 , 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the applicable
27 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
28 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code

1 Private Attorney General Act of 2004 as the representative of the State of California for the
2 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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


- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum wages and overtime compensation due PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
25 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
26 the statutory rate;
- 27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

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- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

Dated: January 6, 2021

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for Plaintiff


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DEMAND FOR A JURY TRIAL

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

Dated: January 6, 2021

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for Plaintiff

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

November 2, 2020

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

HYDRITE CHEMICAL CO.
c/o LYNN B HOLBROOK
513 WADDELL WY
MODESTO CA 95357-1426

Via Online Submission

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

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

Plaintiff was employed by Defendant in California from September 2018 to May 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Defendant also failed to provide Plaintiff and similarly situated aggrieved employees with complete wage statements that included the address of Defendant. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates,

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

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

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

Respectfully,



Shani O. Zakay
Attorney at Law

1 **ZAKAY LAW GROUP, APLC**
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2 3990 Old Town Avenue, Suite C204
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3 Telephone: (619)255-9047; Facsimile: (858) 404-9203

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

7 Attorneys for Plaintiff

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

10
11 ROBERT BENITEZ, an individual, on behalf
of himself and on behalf of all persons
12 similarly situated,

13 Plaintiff,

14 v.

15 HYDRITE CHEMICAL CO., a Wisconsin
Corporation; and DOES 1-50, Inclusive,

16 Defendants.
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Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

7 **PRELIMINARY ALLEGATIONS**

8 1. Defendant HYDRITE CHEMICAL CO. (“Defendant” or “DEFENDANT”) is a
9 Wisconsin Corporation and at all relevant times mentioned herein conducted and continues to
10 conduct substantial and regular business in California.

11 2. DEFENDANT is one of the largest providers of chemicals and related services in
12 the United States.

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to minimum wages, overtime pay and meal and rest periods from September
15 2018 to May 2020. PLAINTIFF was at all times relevant mentioned herein classified by
16 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
17 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

18 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
19 defined as all individuals who are or previously were employed by Defendant in California and
20 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
21 period beginning four years prior to the filing of the Complaint and ending on the date as
22 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
23 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

25 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
27 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
28 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’s

1 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
2 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the
3 other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
4 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
5 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
6 who have been economically injured by DEFENDANT's past and current unlawful conduct,
7 and all other appropriate legal and equitable relief.

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

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

25 **THE CONDUCT**

26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
27 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
28 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to

1 accurately calculate wages for overtime worked by PLAINTIFF and other members of the
2 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
3 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 forfeited wages due them for working overtime without compensation at the correct overtime
5 rates. DEFENDANT's uniform policy and practice to not pay the members of the
6 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
7 applicable law is evidenced by DEFENDANT's business records.

8 9. State law provides that employees must be paid overtime at one-and-one-
9 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
10 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
11 employee's performance.

12 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
13 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
14 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages, as well as, from time
15 to time, shift differential wages. The non-discretionary incentive program provided all
16 employees paid on an hourly basis with incentive compensation. However, when calculating the
17 regular rate of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS
18 Members, DEFENDANT failed to include the incentive compensation as part of the employees'
19 "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors
20 described the incentive program to potential and new employees as part of the compensation
21 package. As a matter of law, the incentive compensation received by PLAINTIFF and other
22 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to
23 do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and
24 other CALIFORNIA CLASS Members by DEFENDANT.

25 11. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct

1 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
2 intended to purposefully avoid the payment of the correct overtime compensation as required by
3 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
4 over competitors who complied with the law. To the extent equitable tolling operates to toll
5 claims by the CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS
6 PERIOD should be adjusted accordingly.

7 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
8 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
9 worked, meaning the time during which an employee is subject to the control of an employer,
10 including all the time the employee is suffered or permitted to work. From time to time,
11 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
12 paying them for all the time they were under DEFENDANT'S control. Specifically,
13 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
14 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended.
15 PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were
16 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF
17 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and
18 overtime compensation by working without their time being accurately recorded and without
19 compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform
20 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
21 time worked is evidenced by DEFENDANT'S business records.

22 13. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
24 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
25 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
26 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
27 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
28 second off-duty meal period each workday in which these employees were required by

1 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
2 CLASS Members therefore forfeited meal breaks without additional compensation and in
3 accordance with DEFENDANTS' strict corporate policy and practice. Even when provided
4 with meal periods, PLAINTIFF was required by DEFENDANT to stay on the premises and/or
5 on duty and/or on call, and to carry a radio and respond to inquiries from DEFENDANT.

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

19 15. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
20 in the same pay period they earned incentive wages, DEFENDANT also failed to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
22 wage statements which failed to show, among other things, the correct overtime rate for
23 overtime worked, including, work performed in excess of eight (8) hours in a workday and/or
24 forty (40) hours in any workweek. Cal. Lab. Code § 226 provides that every employer shall
25 furnish each of his or her employees with an accurate itemized wage statement in writing
26 showing, among other things, gross wages earned and all applicable hourly rates in effect during
27 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
28 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an

1 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*,
2 including the accurate number of total hours worked in every pay period. As a result, from time
3 to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA
4 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

16 17. At all times relevant, Plaintiff and the CALIFORNIA CLASS were subject to an
17 employer policy and/or contract of employment that provided for paid vacations not otherwise
18 provided by a collective-bargaining agreement. Upon Plaintiff’s and the CALIFORNIA
19 CLASS’ separation of employment, they had not used all of their vested vacation and thus their
20 unused, vested vacation was required to have been paid at their final rate upon separation of
21 employment, and at their regular rate of pay. As a result of the miscalculation of regular rate
22 described herein, DEFENDANT violated Labor Code §227.3.

23 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
24 her in the form of two components. One component of PLAINTIFF’S compensation was a base
25 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
26 incentive wages. During these pay periods in which PLAINTIFF was paid the non-discretionary
27 incentive wages by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but
28 DEFENDANT never included the incentive compensation in PLAINTIFF’S regular rate of pay

1 for the purposes of calculating what should have been PLAINTIFF’S accurate overtime rate and
2 thereby underpaid PLAINTIFF for overtime worked throughout her employment with
3 DEFENDANT. The incentive compensation paid by DEFENDANT constituted wages within
4 the meaning of the California Labor Code and thereby should have been part of PLAINTIFF’S
5 “regular rate of pay.” PLAINTIFF was also from time to time unable to take off duty meal and
6 rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required to
7 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period each workday in which he was required by DEFENDANT to work
10 ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
11 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.
12 DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately display
13 PLAINTIFF’s employer name and address, and the correct rates of overtime pay and payments
14 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
15 To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to
16 him or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy
17 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

18 **JURISDICTION AND VENUE**

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

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

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

10 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

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

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
2 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
3 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
4 work, required employees to perform this work and permitted or suffered to permit this
5 overtime work.

6 25. DEFENDANT have the legal burden to establish that each and every
7 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
8 accurately calculate the “regular rate of pay” by including the incentive compensation that
9 PLAINTIFF and members of the CALIFORNIA CLASS were paid by DEFENDANT.
10 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
11 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
12 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
13 overtime rate for all overtime worked, so as to satisfy their burden. This common business
14 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
15 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
16 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
17 claim.

18 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
19 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
20 employee for all overtime worked at the applicable rate, as required by California Labor Code
21 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
22 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
23 as to include all earnings in the overtime compensation calculation as required by California
24 Labor Code §§ 510, *et seq.*

25 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
2 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that failed to pay all wages due the
4 CALIFORNIA CLASS for all minimum wages and overtime worked, and failed
5 to accurately record the applicable rates of all overtime worked by the
6 CALIFORNIA CLASS;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
9 unfairly, and/or deceptively having in place a company policy, practice and
10 procedure that failed to correctly calculate overtime compensation due to
11 PLAINTIFF and the members of the CALIFORNIA CLASS; and
- 12 c. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
14 provide mandatory meal and/or rest breaks to PLAINTIFF and the
15 CALIFORNIA CLASS members;

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

- 18 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
19 joinder of all such persons is impracticable and the disposition of their claims as
20 a class will benefit the parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA CLASS will apply
23 uniformly to every member of the CALIFORNIA CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each
25 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
26 of the CALIFORNIA CLASS, was subjected to the uniform employment
27 practices of DEFENDANTS and was a non-exempt employee paid on an hourly
28 basis and paid additional non-discretionary incentive wages who was subjected

1 to the DEFENDANT’S practice and policy which failed to pay the correct rate of
2 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
3 CALIFORNIA CLASS and thereby systematically under pays overtime
4 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
5 injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the
6 members of the CALIFORNIA CLASS were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
8 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

- 1 CALIFORNIA CLASS Members will avoid asserting their rights individually
2 out of fear of retaliation or adverse impact on their employment;
- 3 c. The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 5 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
6 obtain effective and economic legal redress unless the action is maintained as a
7 Class Action;
- 8 e. There is a community of interest in obtaining appropriate legal and equitable
9 relief for the acts of unfair competition, statutory violations and other
10 improprieties, and in obtaining adequate compensation for the damages and
11 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
12 CLASS;
- 13 f. There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of the
15 CALIFORNIA CLASS for the injuries sustained;
- 16 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
17 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
18 respect to the CALIFORNIA CLASS as a whole;
- 19 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
20 business records of DEFENDANT; and
- 21 i. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims
23 arising out of the conduct of DEFENDANT as to the members of the
24 CALIFORNIA CLASS.

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

3 **THE CALIFORNIA LABOR SUB-CLASS**

4 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
5 causes of Action on behalf of a California sub-class, defined as all members of the
6 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
7 SUB-CLASS”) at any time during the period beginning April 6, 2017 and ending on the date as
8 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
9 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
10 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

11 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
12 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and
14 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
15 compensation for the overtime worked by PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
17 work, required employees to perform this work and permitted or suffered to permit this
18 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
19 CLASS Members minimum and overtime wages at the correct amount to which these
20 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
21 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
22 against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
23 accordingly.

24 35. DEFENDANT maintains records from which the Court can ascertain and
25 identify by name and job title, each of DEFENDANT’s employees who have been
26 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
27 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
28

1 to include any additional job titles of similarly situated employees when they have been
2 identified.

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

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

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
8 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
9 violation of the California Labor Code and California regulations and the
10 applicable California Wage Order;
 - 11 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
12 to overtime compensation for overtime worked under the overtime pay
13 requirements of California law;
 - 14 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
15 for all overtime worked PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS;
 - 17 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA LABOR SUB-CLASS with legally required off-duty
19 uninterrupted thirty (30) minute meal breaks and rest periods;
 - 20 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
22 statements;
 - 23 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
24 conduct;
 - 25 g. The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and
 - 27 h. Whether DEFENDANT's conduct was willful.
- 28

1 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
2 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
3 Members and failed to provide accurate records of the applicable overtime rates for the
4 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
5 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
6 basis by DEFENDANT according to uniform and systematic company procedures as alleged
7 herein above. This business practice was uniformly applied to each and every member of the
8 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
9 adjudicated on a class-wide basis.

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

- 12 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
14 the correct minimum wage pay for which DEFENDANT is liable pursuant to
15 Cal. Lab. Code §§ 1194 and 1197;
- 16 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
18 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
19 Code § 1194 & § 1198;
- 20 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
21 and the other members of the CALIFORNIA CLASS with all legally required
22 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
23 rest breaks;
- 24 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
26 statement in writing showing the name and address of PLAINTIFF's employer,
27 and all accurate and applicable overtime rates in effect during the pay period and
28 the corresponding amount of time worked at each overtime rate by the employee;

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

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

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

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

17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
20 employee paid on an hourly basis and paid additional non-discretionary incentive
21 wages who was subjected to the DEFENDANT's practice and policy which
22 failed to pay the correct rate of overtime wages due to the CALIFORNIA
23 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
24 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
27 of misconduct engaged in by DEFENDANT; and
28

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

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

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

15 i. Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA LABOR SUB-CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CALIFORNIA LABOR SUB-CLASS; or

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

23 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
24 refused to act on grounds generally applicable to the CALIFORNIA LABOR
25 SUB-CLASS, making appropriate class-wide relief with respect to the
26 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
27 uniformly failed to pay all wages due, including the correct overtime rate, for all
28

1 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
2 required by law;

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

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

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

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

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

27 iii. In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid

1 asserting their legal rights out of fear of retaliation by DEFENDANT,
2 which may adversely affect an individual’s job with DEFENDANT or
3 with a subsequent employer, the Class Action is the only means to assert
4 their claims through a representative; and,

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

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

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

1 improprieties, and in obtaining adequate compensation for the damages and
2 injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA
3 LABOR SUB-CLASS;

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

19
20 **FIRST CAUSE OF ACTION**

21 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

27 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
28 Code § 17021.

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

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

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

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

22 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
25 worked, failed to accurately to record the applicable rate of all overtime worked, and failed to
26 provide the required amount of overtime compensation due to a systematic miscalculation of the
27 overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
28 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for

1 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
2 § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

17
18 **SECOND CAUSE OF ACTION**

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to

1 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
2 Members.

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

5 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a wage less than
7 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

25 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
27 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
28 the California Labor Code and/or other applicable statutes. To the extent minimum wage
compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§

1 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
2 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA
3 LABOR SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful,
4 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
5 CLASS Members are entitled to seek and recover statutory costs.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

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

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

27 76. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
28 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.

1 Code § 1198 further states that the employment of an employee for longer hours than those
2 fixed by the Industrial Welfare Commission is unlawful.

3 77. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of overtime worked and correct applicable overtime rate for the amount of overtime
6 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
9 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
10 all overtime worked.

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

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

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

26 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

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

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

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

27 86. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

16
17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

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

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

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

- 25 a. Gross wages earned;
- 26 b. 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 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

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

14 98. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
15 in the same pay period they earned incentive wages, DEFENDANT also failed to provide
16 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
17 wage statements which failed to show, among other things, the correct overtime rate for
18 overtime worked, including, work performed in excess of eight (8) hours in a workday and/or
19 forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest
20 periods. 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. Aside from the violations listed
24 above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage
25 statement that lists all the requirements under California Labor Code 226 *et seq.*, including the
26 total number of hours worked. As a result, from time to time DEFENDANT provided
27 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
28 violated Cal. Lab. Code § 226.

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

12
13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

22 As used in this article:(a) "Wages" includes all amounts for labor performed by
23 employees of every description, whether the amount is fixed or ascertained by the
24 standard of time, 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
27 be paid for is performed personally by the person demanding payment.

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

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

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

11 104. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
12 SUB-CLASS Members’ employment contract.

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

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
16 who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 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-
20 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,
21 to these employees who actually worked overtime, as 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, PLAINTIFF
24 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
25 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
27 costs as allowed by law.

28 **EIGHTH CAUSE OF ACTION**

**FAILURE TO PAY VACATION WAGES
(Alleged by PLAINTIFF against all Defendants)**

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

1 109. At all relevant times, California Labor Code §227.3 provides for the following:

2 Unless otherwise provided by a collective-bargaining agreement, whenever a
3 contract of employment or employer policy provides for paid vacations, and an
4 employee is terminated without having taken off his vested vacation time, all
5 vested vacation shall be paid to him as wages at his final rate in accordance with
6 such contract of employment or employer policy respecting eligibility or time
7 served; provided, however, that an employment contract or employer policy shall
8 not provide for forfeiture of vested vacation time upon termination. The Labor
9 Commissioner or a designated representative, in the resolution of any
10 dispute with regard to the principles of equity and fairness.

11 110. At all times relevant, Plaintiff and the CALIFORNIA CLASS were subject to an
12 employer policy and/or contract of employment that provided for paid vacations not otherwise
13 provided by a collective-bargaining agreement. Upon Plaintiff's and the CALIFORNIA CLASS'
14 separation of employment, they had not used all of their vested vacation and thus their unused,
15 vested vacation was required to have been paid at their final rate upon separation of employment,
16 and at their regular rate of pay. As a result of the miscalculation of regular rate described herein,
17 DEFENDANT violated Labor Code §227.3.

18 111. Plaintiffs seeks, on their behalf and on behalf of the Vacation Subclass, all
19 damages and remedies available under California Labor Code §227.3, including payment of the
20 vacation wages at the final rate.

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

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

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

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

26 113. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
28 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
fundamentally a law enforcement action designed to protect the public and not to benefit private
parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In

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

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

11 115. On _____ PLAINTIFF gave written notice by certified mail to the Labor
12 and Workforce Development Agency (the "Agency") and the employer of the specific
13 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
14 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
15 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
16 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
17 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 116. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
21 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
22 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
23 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
24 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
25 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
26 226.3, 226.7, 227.3, 510 , 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the
27 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
28 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor

1 Code Private Attorney General Act of 2004 as the representative of the State of California for
2 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum wages and overtime compensation due PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
25 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
26 the statutory rate;
- 27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

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- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff