

**SUMMONS
(CITACION JUDICIAL)**

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

RUSH MEDIA COMPANY, LLC, a Wisconsin limited liability company; XLT MANAGEMENT SERVICES, INC., an Illinois corporation; and DOES 1 through 30, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DANIEL JACOBS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

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

AUG 25 2020

Sherri R. Carter, Secretary/Atticer/Clerk of Court
By Steven Drew, Deputy

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER
(Número del Caso) **20STCV32350**

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

DATE: **AUG 25 2020**
(Fecha)

Sherri R. Carter, Clerk

Clerk, by **STEVEN DREW**

Deputy
(Adjunto)

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

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

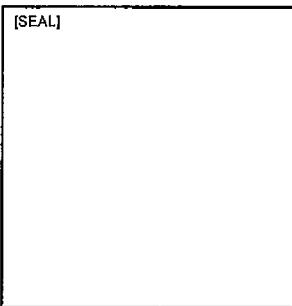
NOTICE TO THE PERSON SERVED: You are served

- 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):



VIA FAX

CONFORMED COPY
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County of Los Angeles

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Sherri K. Carter, CLERK OF COURT

By Steven Drew, Deputy

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15 ATTORNEYS FOR PLAINTIFF DANIEL JACOBS

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF LOS ANGELES

18 DANIEL JACOBS, an individual, on
19 behalf of himself, and on behalf of all
20 persons similarly situated,

21 Plaintiff,

22 vs.

23 RUSH MEDIA COMPANY, LLC, a
24 Wisconsin limited liability company; XLT
25 MANAGEMENT SERVICES, INC., an
26 Illinois corporation; and DOES 1 through
27 30, Inclusive;

28 Defendants.

Case No. 20STCV32350

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUTY IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR JURY TRIAL

VIA FAX

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

4 **INTRODUCTION**

5 1. PLAINTIFF is an individual who worked as a video camera operator in California for
6 defendants RUSH MEDIA COMPANY, LLC and XLT MANAGEMENT SERVICES, INC
7 (hereinafter collectively "DEFENDANTS"). Plaintiff alleges that DEFENDANTS have violated and
8 continues to violate the California Labor Code protections applicable to California employees because
9 DEFENDANTS have misclassified its California employees as independent contractors. In order to
10 provide services to their customers, DEFENDANTS hire California workers to aid DEFENDANTS
11 in providing services in the usual course of DEFENDANTS' business to their clients. The costs, as
12 proscribed by law, of the personnel hired to work for DEFENDANTS, includes not only the pay of
13 these employees but the cost of the employer's share of tax payments to the federal and state
14 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
15 and payments for workers' compensation insurance. To avoid the payment of these legally proscribed
16 expenses to the fullest extent possible, DEFENDANTS devised a scheme to place the responsibility
17 for the payment of these costs and expenses of DEFENDANTS on the shoulders of PLAINTIFF and
18 other similarly situated California employees. As employer, DEFENDANTS are legally responsible
19 for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to
20 PLAINTIFF and all those similarly situated misclassified independent contractors as
21 DEFENDANTS' employees, the cost of the employer's share of payments to the federal and state
22 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
23 and payments for workers' compensation insurance, plus penalties and interest.

24 **THE PARTIES**

25 2. Defendant RUSH MEDIA COMPANY, LLC, ("RUSH MEDIA") is a limited liability
26 company of unknown origin, that at all relevant times mentioned herein conducted and continues to
27 conduct substantial business in the State of California, County of Los Angeles.

28 3. Defendant XLT MANAGEMENT SERVICES, INC. ("XLT"), is an Illinois

1 corporation, that is registered to do business in the State of California and at all relevant times
2 mentioned herein conducted and continues to conduct substantial business in the State of California,
3 County of Los Angeles.

4 4. RUSH MEDIA provides, among other things, video, field production and post-
5 production packaging services for live television events for its clients, major television networks and
6 sports leagues, such as Fox Sports Networks, CBS Sports and ESPN. RUSH MEDIA utilizes
7 independent contractors, rather than employees, to provide its clients with video, field production and
8 post-production packaging services for live television events.

9 5. XLT is one of the nation’s leading providers of labor management services for major
10 broadcast networks, as well as clients in sports, entertainment, concerts, conventions, corporate
11 functions and digital media, including RUSH MEDIA.

12 6. DEFENDANTS were the joint employers of PLAINTIFF as evidenced by Wage
13 Statements, Employee Handbooks, Independent Contractor Agreements, and other employment
14 documents and by the company PLAINTIFF performed work for respectively and are therefore joint
15 responsible as employers for the conduct alleged herein.

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

25 8. The agents, servants and/or employees of the DEFENDANTS and each of them acting
26 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
27 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
28 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

1 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
2 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss
3 sustained as a proximate result of the conduct of the DEFENDANTS’ agents, servants and/or
4 employees.

5 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
6 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
7 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
9 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10 10. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
11 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
13 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
14 for each underpaid employee.

15 11. PLAINTIFF worked for DEFENDANTS as an independent contractor, operating video
16 cameras for live sporting events throughout California between November 2016 and November 2019.

17 12. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
18 individuals that worked for defendants RUSH MEDIA and/or XLT in California as independent
19 contractors (“CALIFORNIA CLASS”) at any time between April 6, 2020 on a date determined by the
20 Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
21 CLASS members is under five million dollars (\$5,000,000.00).

22 13. DEFENDANTS’ uniform policies and practices alleged herein were unlawful, unfair
23 and deceptive business practices whereby DEFENDANTS retained and continues to retain wages and
24 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
27 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS’ past
28 and current unlawful conduct, and all other appropriate legal and equitable relief.



1 **THE CONDUCT**

2 **A. Misclassification**

3 15. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person or
4 employer to engage in ...[w]illful misclassification of an individual as an independent contractor.” The
5 penalty for willful misclassification of employees is a “civil penalty of not less than five thousand
6 dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to
7 any other penalties or fines permitted by law.” It is further provided that, in the event that an employer
8 is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not
9 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
10 each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8.

11 16. Here, DEFENDANTS willfully misclassified PLAINTIFF and other similarly situated
12 California workers who provided DEFENDANTS with video, field production and post-production
13 packaging services for live television events for DEFENDANTS’ clients. In other words, PLAINTIFF
14 and other similarly situated California workers provided DEFENDANTS with work and services within
15 the usual course of DEFENDANTS’ business. DEFENDANTS controlled and directed the work
16 performed by PLAINTIFF and the other similarly situated misclassified California workers by, among
17 other things, assigning events, scheduling hours of work, providing equipment, issuing written policies
18 and procedures for the performance of work and conduct in the workplace. Finally, PLAINTIFF and
19 the other similarly situated misclassified California workers are not and were not engaged in a
20 customarily independently established trade, occupation or business as the same nature of the work
21 performed. DEFENDANTS engaged in a pattern and practice of misclassifying California workers as
22 independent contractors, hired to perform work and services core to DEFENDANTS’ businesses, in
23 violation of California Labor Code Section 226.8.

24 17. Upon hire, the position was represented by DEFENDANTS to PLAINTIFF and the
25 other workers as an independent contractor position in exchange for, in most circumstances, a flat rate
26 of pay, and in other instances an hourly rate of pay, for the time they spend providing labor and services
27 to DEFENDANTS’ third party customers. In many instances, PLAINTIFF and the members of the
28 CALIFORNIA CLASS were not compensated at least the applicable minimum wage for time spent

1 providing labor and services to DEFENDANTS’ third party customers. Similarly, PLAINTIFF and
2 other members of the CALIFORNIA CLASS were not compensated overtime wages for any of their
3 time spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or
4 forty (40) hours in a workweek. PLAINTIFF and other members of the CALIFORNIA CLASS were
5 paid the hourly rate to perform labor services on DEFENDANTS’ behalf. PLAINTIFF and other
6 workers were not compensated any other wages besides the non-negotiable hourly rate, and they were
7 not allowed to record their time while they waited for DEFENDANTS to give them work.
8 DEFENDANTS did not pay PLAINTIFF and other CALIFORNIA CLASS members for the time spent
9 driving to and from jobs, and all the other time they spent working for DEFENDANTS outside of the
10 job assignment they were placed at with DEFENDANTS’ third party customers. The finite set of tasks
11 required to be performed by the workers is, when notified via cell phone, travel to DEFENDANTS’
12 customers to perform jobs, including but not limited to, setting up and breaking down camera
13 equipment and shooting various sporting events, all in accordance with DEFENDANTS’ business
14 practices and policies.

15 18. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
16 CLASS perform work subject to the control of DEFENDANTS in that DEFENDANTS had the
17 authority to exercise complete control over the work performed and the manner and means in which
18 the work was performed. DEFENDANTS provided the customers and DEFENDANTS provided the
19 instructions as to how to perform their work.

20 19. California Labor Code § 3357 defines “employee” as “every person in the service of an
21 employer under any appointment or contact of hire or apprenticeship, express or implied, oral or
22 written, whether lawfully or unlawfully employed.” Additionally, to the California Labor Code’s
23 presumption that workers are employees, the California Supreme Court has determined the most
24 significant factor to be considered in distinguishing an independent contractor from an employee is
25 whether the *employer or principal has control or the right to control the work both as to the work*
26 *performed and the manner and means in which the work is performed.* DEFENDANTS heavily
27 controlled both the work performed and the manner and means in which the PLAINTIFF and other
28 workers performed their work in that:

1 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
2 involved in a distinct business, but instead were provided with instructions as to how to perform their
3 work and the manner and means in which the work was to be performed by means of DEFENDANTS’
4 and DEFENDANTS’ customers manuals and written instructions;

5 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were continuously
6 provided with training and supervision, including following DEFENDANTS’ company documents,
7 and received training from DEFENDANTS as to how and in what way to perform the services;

8 (c) DEFENDANTS set the requirements as to what policies and procedures all of
9 the workers were to follow, including but not limited to, hourly rates, location of assignment, where to
10 park, and what to wear;

11 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
12 opportunity for profit or loss because DEFENDANTS only paid these workers an hourly rate.
13 DEFENDANTS controlled and assigned the workers which tasks were to be performed;

14 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
15 services and labor which are part of the core of DEFENDANTS’ principal business and is closely
16 integrated with and essential to the employer’s business of services and labor to their customers;

17 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
18 work themselves and did not hire others to perform their work for them;

19 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the
20 authority to make employment-related personnel decisions;

21 (h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their
22 work in a particular order and sequence in accordance with DEFENDANTS and DEFENDANTS
23 customers company policies; and,

24 (i) DEFENDANTS had the “right” to control every critical aspect of
25 DEFENDANTS labor operation in that DEFENDANTS provided the customer, assigned where
26 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned the hourly rate
27 or flat rate, and step by step instructions to PLAINTIFF and other members of the CALIFORNIA
28 CLASS as to the entire process of working at their assigned locations. PLAINTIFF and other workers

1 provided services and labor for DEFENDANTS customers and were not actually in business for
2 themselves.

3 20. As a result, stripped of all the legal fictions and artificial barriers to an honest
4 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
5 CLASS on the one hand, and DEFENDANTS on the other hand, PLAINTIFF and all the other members
6 of the CALIFORNIA CLASS are and were employees of DEFENDANTS and not independent
7 contractors of DEFENDANTS and should therefore be properly classified as non-exempt, hourly
8 employees.

9 21. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
10 members as defined by DEFENDANTS was executed by them through the performance of non-exempt
11 labor.

12 22. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
13 exempt labor subject to DEFENDANTS' complete control over the manner and means of performance,
14 DEFENDANTS instituted a blanket classification policy, practice and procedure by which all of these
15 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
16 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business related
17 expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members were also
18 required to pay DEFENDANTS 's share of payroll taxes and mandatory insurance premiums. As a result
19 of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF and the other
20 CALIFORNIA CLASS Members who performed this work for DEFENDANTS, DEFENDANTS
21 committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and
23 procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS members
24 as employees and thereby failed to pay them wages for all time worked, reimbursement of business
25 related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these
26 employees for the employer's share of payroll taxes and mandatory insurance.

27 23. DEFENDANTS, as a matter of law, has the burden of proving that employees are
28 properly classified and that DEFENDANTS otherwise complies with applicable laws. DEFENDANTS,



1 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
2 Members as independent contractors in violation of the California Labor Code and regulations
3 promulgated thereunder.

4 **B. Meal Period Violations**

5 24. In California, an employer may not employ an employee for a work period of more than
6 five hours per day without providing the employee with a duty-free meal period of not less than thirty
7 minutes, except that if the total work period per day of the employee is no more than six hours, the
8 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
9 meal period of not less than thirty minutes is required if an employee works more than ten hours per
10 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
11 may be waived by mutual consent of the employer and employee only if the first meal period was not
12 waived. Labor Code Section 512.

13 25. If an employer fails to provide an employee a duty-free meal period in accordance with
14 an applicable IWC Order, the employer must pay one additional hour of pay at the employee’s regular
15 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
16 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

17 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
18 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
19 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
20 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
21 required from time-to-time to perform work as ordered by DEFENDANTS for more than five (5) hours
22 during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed
23 to provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
24 some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of
25 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
26 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
27 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
28 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

1 **C. Rest Period Violations**

2 27. The applicable IWC Wage Order requires that employers must authorize and permit
3 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
4 each work period. The rest period is based on the total hours worked daily and must be at the minimum
5 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
6 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
7 “major fraction” of four. A rest period is not required for employees whose total daily work time is less
8 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
9 must pay for such periods.

10 28. If an employer fails to provide an employee a rest period in accordance with an applicable
11 IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular
12 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
13 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
14 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
15 was not provided during that workday.

16 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
17 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
18 CLASS members were also required to work in excess of four (4) hours without being provided ten
19 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
20 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
21 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
22 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
23 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
24 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
26 rest periods by DEFENDANTS and DEFENDANTS’ managers.

27 **D. Failure to Pay Minimum, Regular and Overtime Wages**

28 30. From time-to-time during the CLASS PERIOD, DEFENDANTS failed to accurately

1 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
2 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 are required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked,
4 meaning the time during which an employee was subject to the control of an employer, including all
5 the time the employee was permitted or suffered to permit this work. DEFENDANTS required
6 PLAINTIFF and CALIFORNIA CLASS members to work off the clock without paying them for all
7 the time they were under DEFENDANTS' control. PLAINTIFF and other CALIFORNIA CLASS
8 Members also worked more than eight hours in a workday and/or forty hours in a workweek, but
9 DEFENDANTS failed to pay these employees overtime pay as DEFENDANTS only paid a flat rate or
10 a flat hourly rate for all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS
11 members forfeited minimum wages and overtime wage compensation by working without their time
12 being correctly recorded and without compensation at the applicable rates. DEFENDANTS' policy and
13 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
14 evidenced by DEFENDANTS' business records. As a result, DEFENDANTS failed to compensate
15 PLAINTIFF and the members of the CALIFORNIA CLASS all minimum, regular and overtime wages
16 for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

17 **E. Failure to Reimburse Necessary and Required Business Expenses**

18 31. Under California Labor Code Section 2802, employers are required to indemnify
19 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
20 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
23 employee, at the time of obeying the directions, believed them to be unlawful."

24 32. From time-to-time during the CLASS PERIOD, DEFENDANTS as a matter of corporate
25 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
26 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
27 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
28 behalf of DEFENDANTS.

1 33. From time-to-time during the CLASS PERIOD, in the course of their employment
2 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
3 DEFENDANTS to use personal cellular phones and use their personal vehicles as a result of and in
4 furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
5 indemnified by DEFENDANTS for the cost associated with the use of the personal cellular phones and
6 personal vehicles for DEFENDANTS' benefit. In order to work for DEFENDANTS, PLAINTIFF and
7 other CALIFORNIA CLASS Members were required to use their personal vehicles to travel to different
8 locations each work shift and were also required to use their personal cell phones to review, receive
9 and accept job assignments and as such it is mandatory to have a cell phone. As a result, in the course
10 of their employment with DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA
11 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related
12 to the use of their personal cellular phones on behalf of and for the benefit of DEFENDANTS. Further,
13 PLAINTIFF and other CALIFORNIA CLASS members were also not reimbursed or indemnified by
14 DEFENDANTS for the cost associated with using their personal vehicles while performing for
15 DEFENDANTS. Moreover, PLAINTIFF and other CALIFORNIA CLASS members were also
16 required from time to time to pay for parking costs at certain live entertainment venues and were not
17 reimbursed for those costs. As a result, in the course of their employment with DEFENDANTS,
18 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
19 expenses which included, but were not limited to, costs related to travel all on behalf of and for the
20 benefit of DEFENDANTS.

21 **F. Wage Statement Violations**

22 34. California Labor Code Section 226 requires an employer to furnish its employees an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
24 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of the employee's social security number or an employee
27 identification number other than a social security number, (8) the name and address of the legal entity
28 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
3 DEFENDANTS' intentional and willful misclassification of PLAINTIFF and the members of the
4 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANTS issued
5 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
6 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
7 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
8 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
9 last four digits of the employee's social security number or an employee identification number other
10 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
11 all applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

13 36. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
15 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
16 payroll error due to clerical or inadvertent mistake.

17 **G. Unfair Competition**

18 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
19 members, DEFENDANTS committed acts of unfair competition in violation of the California Unfair
20 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
21 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
22 CALIFORNIA CLASS members as employees. The proper classification of these employees is
23 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation to meet
24 this burden, DEFENDANTS failed to pay all required wages for work performed by PLAINTIFF and
25 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
26 promulgated thereunder as herein alleged.

27 38. PLAINTIFF as a worker for DEFENDANTS, was classified by DEFENDANTS as an
28 independent contractor and thus did not receive pay for all time worked, including minimum and

1 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
2 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
3 receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF
4 therefore forfeited meal and rest breaks without additional compensation and in accordance with
5 DEFENDANTS' strict corporate policy and practice which did not provide for mandatory meal and
6 rest breaks. To date, DEFENDANTS has not fully paid PLAINTIFF all wages still owed to him or any
7 penalty wages owed to him under California Labor Code § 203. The amount in controversy for
8 PLAINTIFF individually does not exceed the sum or value of \$75,000.

9 THE CALIFORNIA CLASS

10 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
12 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
13 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
14 Members is under five million dollars (\$5,000,000.00).

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

17 41. All CALIFORNIA CLASS members who performed and continue to perform this work
18 for DEFENDANTS during the CLASS PERIOD are similarly situated in that they are subject to
19 DEFENDANTS' policy and practice that required them to perform work without compensation as
20 required by law.

21 42. During the CLASS PERIOD, DEFENDANTS violated the rights of the PLAINTIFF and
22 the CALIFORNIA CLASS members under California law, without limitation, in the following
23 manners:

24 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
25 17200, *et seq.* the ("UCL"), in that DEFENDANTS, while acting as employer, devised and implemented
26 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
27 unfairly and deceptively shoulder the cost of DEFENDANTS' wages for all unpaid wages, business
28 related expenses, and DEFENDANTS' share of employment taxes, social security taxes, unemployment

1 insurance and workers' compensation insurance;

2 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
3 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
4 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
5 members as independent contractors;

6 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
7 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
8 policy, practice and procedure that accurately determined the amount of working time spent by
9 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

10 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
11 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with all legally required meal and rest breaks;

13 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
14 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
15 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
16 duties; and,

17 (f) Committing an act of unfair competition in violation of the UCL, by violating
18 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
19 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
20 unpaid overtime to the benefit of DEFENDANTS.

21 43. As a result of DEFENDANTS' policies, practices and procedures, there are numerous
22 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
23 CLASS PERIOD. These questions include, but are not limited, to the following:

24 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
25 misclassified as independent contractors by DEFENDANTS;

26 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
27 all the protections of the California Labor Code that apply when properly classified as non-exempt
28 employees;

1 (c) Whether DEFENDANTS' policies, practices and pattern of conduct described in
2 this Complaint was and is unlawful;

3 (d) Whether DEFENDANTS unlawfully failed to pay their share of state and federal
4 employment taxes as required by state and federal tax laws;

5 (e) Whether DEFENDANTS' policy, practice and procedure of classifying the
6 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
7 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
8 provisions of California State law;

9 (f) Whether DEFENDANTS unlawfully failed to keep and furnish the
10 CALIFORNIA CLASS members with accurate records of all time worked;

11 (g) Whether DEFENDANTS have engaged in unfair competition by the above-listed
12 conduct; and,

13 (h) Whether DEFENDANTS' conduct was willful.

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

16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
17 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
18 parties and the Court;

19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
20 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
21 CALIFORNIA CLASS member;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
24 classified as an independent contractor upon hiring based on the defined corporate policies and practices
25 and labors under DEFENDANTS' procedure that failed to properly classify the PLAINTIFF and the
26 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of
27 DEFENDANTS' employment practices. PLAINTIFF and the CALIFORNIA CLASS members were
28 and are similarly or identically harmed by the same unlawful, unfair, deceptive and persuasive pattern

1 of misconduct engaged in by DEFENDANTS by deceptively telling all the CALIFORNIA CLASS
2 members that they were not entitled to minimum wages, the employer's share of payment of payroll
3 taxes and mandatory insurance, and reimbursement for business expenses based on the defined corporate
4 policies and practices, and unfairly failed to pay these employees who were improperly classified as
5 independent contractors; and,

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

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

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

17 (i) Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA CLASS; and/or,

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

23 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
24 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
25 CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly classified and treated the
26 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
27 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
28 independent contractors, and thereby denied these employees' wages and payments for business



1 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

2 (i) With respect to the First Cause of Action, the final relief on behalf of the
3 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
4 PLAINTIFF seeks declaratory relief holding that DEFENDANTS' policies and practices constitute
5 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
6 declared to constitute unfair competition.

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

12 (i) The interest of the CALIFORNIA CLASS members in individually
13 controlling the prosecution or defense of separate actions;

14 (ii) The extent and nature of any litigation concerning the controversy already
15 commenced by or against members of the CALIFORNIA CLASS;

16 (iii) In the context of wage litigation because as a practical matter a substantial
17 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
18 of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS
19 or with a subsequent employer, the Class Action is the only means to assert their claims through a
20 representative;

21 (iv) The desirability or undesirability of concentration the litigation of the
22 claims in the particular forum;

23 (v) The difficulties likely to be encountered in the management of a Class
24 Action; and,

25 (vi) The basis of DEFENDANTS' policies and practices applied to all the
26 CALIFORNIA CLASS members.

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

1 (a) The questions of law and fact common to the CALIFORNIA CLASS
2 predominate over any question affecting only individual members;

3 (b) A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS;

5 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
6 bring all CALIFORNIA CLASS members before the Court;

7 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
8 effective and economic legal redress unless the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
11 adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon
12 the CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of DEFENDANTS are sufficient to adequately compensate the CALIFORNIA
15 CLASS members for any injuries sustained;

16 (g) DEFENDANTS has acted or has refused to act on grounds generally applicable
17 to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
18 CLASS as a whole;

19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
20 business records of DEFENDANTS; 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 arising out of
23 DEFENDANTS' conduct as to the CALIFORNIA CLASS Members.

24 47. DEFENDANTS maintain records from which the Court can ascertain and identify by
25 name and job title, each of DEFENDANTS' employees who have been intentionally subjected to
26 DEFENDANTS' corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
27 leave to amend the complaint to include any additional job titles of similarly situated employees when
28 they have been identified.



1 **THE CALIFORNIA LABOR SUB-CLASS**

2 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
3 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
4 CLASS who are or previously were employed by defendants RUSH MEDIA and/or XLT in California
5 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the
6 filing of the Complaint and ending on the date as determined by the Court (the “CALIFORNIA
7 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc § 382. The amount in
8 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five
9 million dollars (\$5,000,000.00).

10 49. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
11 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission
12 (“IWC”) Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title
13 alone and without regard to the actual overall requirements of the job, systematically classified
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS as independent
15 contractors in order to avoid the payment of all wages, and in order to avoid the obligations under the
16 applicable California Labor Code provisions. To the extent equitable tolling operates to toll claims by
17 the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-
18 CLASS PERIOD should be adjusted accordingly.

19 50. DEFENDANTS maintain records from which the Court can ascertain and identify by
20 job title each of DEFENDANTS’ employees who as CALIFORNIA LABOR SUB-CLASS Members
21 have been systematically, intentionally and uniformly misclassified as independent contractors as a
22 matter of DEFENDANTS’ corporate policy, practices and procedures. PLAINTIFF will seek leave to
23 amend the complaint to include these additional job titles when they have been identified.

24 51. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
25 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

26 52. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under
27 California law by:

- 28 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and



1 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for which DEFENDANTS is liable;

3 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
4 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
5 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
6 DEFENDANTS is liable pursuant to Cal. Lab. Code § 1194;

7 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
8 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
9 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

10 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
12 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
13 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
14 of time worked at each hourly rate by the employee;

15 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
16 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
17 their job duties; and,

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

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

25 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
26 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
27 the disposition of their claims as a class will benefit the parties and the Court;

28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that

1 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
2 to every member of the CALIFORNIA LABOR SUB-CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims of each
4 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
5 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
6 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
7 DEFENDANTS' systematic classification practices. PLAINTIFF and all other members of the
8 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANTS'
9 violations of the laws of California; and,

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

16 54. 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,
19 statutory and other legal questions within the class format, prosecution of separate actions by individual
20 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
21 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
22 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
23 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
24 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
25 party to the adjudication or substantially impair or impede their ability to protect their interests.

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

1 that the DEFENDANTS uniformly classified and treated the members of the CALIFORNIA LABOR
2 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
3 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
4 independent contractors, and thereby denied these employees the protections afforded to them under
5 the California Labor Code;

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

11 i) The interests of the members of the CALIFORNIA LABOR SUB-
12 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
13 expense of individual actions will be avoided to recover the relatively small amount of economic losses
14 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
15 substantial expense and burden of 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 A. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
20 of conduct for the DEFENDANTS; and/or,

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

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



1 claims through a representative; and,

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

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

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

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

16 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
17 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

18 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
19 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
20 Action;

21 (e) There is a community of interest in obtaining appropriate legal and equitable
22 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
23 adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted
24 upon the CALIFORNIA LABOR SUB-CLASS;

25 (f) There is a community of interest in ensuring that the combined assets of
26 DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR
27 SUB-CLASS for the injuries sustained;

28 (g) DEFENDANTS has acted or refused to act on grounds generally applicable to



1 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with
2 respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANTS; and,

5 (i) Class treatment provides manageable judicial treatment calculated to bring a
6 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
7 conduct of DEFENDANTS.

8 **JURISDICTION AND VENUE**

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

13 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
14 because DEFENDANTS (i) currently maintains and at all relevant times maintained its principal offices
15 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
16 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
17 CALIFORNIA LABOR SUB-CLASS.

18 **FIRST CAUSE OF ACTION**

19 **For Unlawful, Unfair and Deceptive Business Practices**

20 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

24 59. DEFENDANTS is a "person" as that term is defined under Cal. Bus. & Prof. Code §
25 17021.

26 60. Section 17200 of the California Business & Professions Code defines unfair competition
27 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
28 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other



1 equitable relief with respect to unfair competition as follows:

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

10 California Business & Professions Code § 17203.

11 61. By the conduct alleged herein, DEFENDANTS has engaged and continues to engage in
12 a business practice which violates California law, including but not limited to the applicable Industrial
13 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
14 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
15 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
16 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
17 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment
18 of the employer’s share of income taxes, social security taxes, unemployment insurance and workers’
19 compensation insurance.

20 62. By the conduct alleged herein DEFENDANTS has obtained valuable property, money,
21 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
22 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
23 DEFENDANTS so as to allow DEFENDANTS to unfairly compete. Declaratory and injunctive relief
24 is necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would
25 not afford adequate and complete relief.

26 63. All the acts described herein as violations of, among other things, the California Labor
27 Code, California Code of Regulations and the Industrial Welfare Commission Wage Orders, were
28 unlawful, were in violation of public policy, were immoral, unethical, oppressive, and unscrupulous,

1 and were likely to deceive employees, and thereby constitute deceptive, unfair and unlawful business
2 practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

3 64. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
4 in that DEFENDANTS' policy and practice was to represent to the CALIFORNIA CLASS Members
5 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
6 insurance and other benefits as required by California law, when in fact these representations were false
7 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
8 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

9 65. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
10 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members
11 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

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

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

21 68. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
22 deceptive in that DEFENDANTS' policies, practices and procedures failed to provide all legally
23 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
24 required by Cal. Lab. Code §§ 226.7 and 512.

25 69. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
27 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
28 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday

1 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

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

16 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
17 do, seek such relief as may be necessary to restore to them the money and property which
18 DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
19 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

20 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
21 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
22 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
23 unfair business practices in the future.

24 75. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
27 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
28 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic



1 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
2 business practices.

3 **SECOND CAUSE OF ACTION**

4 **For Failure to Pay Minimum Wages**

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

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)**

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

10 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
11 a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate and
13 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

21 81. DEFENDANTS maintained a wage practice of paying PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time
23 they worked. As set forth herein, DEFENDANTS’ policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS.

26 82. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
28 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

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

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

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

19 87. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
21 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay
22 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
23 DEFENDANTS perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure to Pay Overtime Wages**

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

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

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

22 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS failed to
23 pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time
24 they worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510
25 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were
26 regularly required to work, and did in fact work, overtime that DEFENDANTS never recorded as
27 evidenced by DEFENDANTS' business records and witnessed by DEFENDANTS' employees.

28 92. By virtue of DEFENDANTS' unlawful failure to pay compensation to PLAINTIFF and

1 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
3 economic in amounts which are presently unknown to them and which can be ascertained according to
4 proof at trial.

5 93. DEFENDANTS knew or should have known that PLAINTIFF and the CALIFORNIA
6 CLASS Members were misclassified as independent contractors and DEFENDANTS elected, either
7 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
8 corporate policy, practice and procedure.

9 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
10 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
11 statutory penalties against DEFENDANTS in a sum as provided by the California Labor Code and/or
12 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
13 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
14 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
15 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
16 recover statutory costs.

17 95. In performing the acts and practices herein alleged in violation of California labor laws,
18 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
19 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
20 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their
22 legal 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 corporate profits at the
24 expense of these employees.

25 **FOURTH CAUSE OF ACTION**

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

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

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



DEFENDANTS)

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

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

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

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

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FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)

100. 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.

101. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some 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 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)**

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

7 105. California Labor Code Section 226 requires an employer to furnish its employees an
8 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
9 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
10 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and only the last four digits of the employee’s social security number or an employee
12 identification number other than a social security number, (8) the name and address of the legal entity
13 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee.

15 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
16 DEFENDANTS issued inaccurate itemized wages statements to PLAINTIFF and the members of the
17 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
18 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
19 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
20 (7) the name of the employee and only the last four digits of the employee’s social security number or
21 an employee identification number other than a social security number, (8) the name and address of the
22 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee.

24 107. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
26 DEFENDANTS’ violations are knowing and intentional, were not isolated or due to an unintentional
27 payroll error due to clerical or inadvertent mistake.

28 108. DEFENDANTS knowingly and intentionally failed to comply with Labor Code § 226,





1 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
 2 These damages include, but are not limited to, costs expended calculating the true amount of time
 3 worked and the amount of employment taxes which were not properly paid to state and federal tax
 4 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
 5 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
 6 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
 7 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
 8 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
 9 SUB-CLASS herein).

10 **SEVENTH CAUSE OF ACTION**

11 **For Failure to Reimburse Employees for Required Expenses**

12 **[Cal. Lab. Code § 2802]**

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

14 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
 15 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

16 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

17 An employer shall indemnify his or her employee for all necessary
 18 expenditures or losses incurred by the employee in direct consequence of
 19 the discharge of his or her duties, or of his or her obedience to the directions
 20 of the employer, even though unlawful, unless the employee, at the time of
 21 obeying the directions, believed them to be unlawful.

22 111. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing
 23 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
 24 required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. Specifically,
 25 DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
 26 members for expenses which included, but were not limited to, the cost associated with the use of their
 27 personal cellular phones and personal vehicles for DEFENDANTS' benefit. In order to work for
 28 DEFENDANTS, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required

1 to use their personal vehicles to travel and to use DEFENDANTS’ mobile application and as such it is
2 mandatory to have a cell phone that is compatible with DEFENDANTS’ mobile application. As a result,
3 in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the
4 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included, but
5 were not limited to, the costs related to the use of their personal cellular phones and personal vehicles
6 all on behalf of and for the benefit of DEFENDANTS. Further, PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members are also not reimbursed or indemnified by DEFENDANTS for the cost
8 associated with using their personal vehicles while driving for DEFENDANTS. Moreover, PLAINTIFF
9 and other CALIFORNIA LABOR SUB-CLASS Members were also required from time to time to pay
10 for parking costs at certain places. As a result, in the course of their employment with DEFENDANTS,
11 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
12 business expenses which included, but were not limited to, costs related to travel all on behalf of and
13 for the benefit of DEFENDANTS. These expenses are necessary to complete their principal job duties.
14 DEFENDANTS is estopped by DEFENDANTS’ conduct to assert any waiver of this expectation.
15 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and
17 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
18 under the laws and regulations of California.

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

23 **EIGHTH CAUSE OF ACTION**

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

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

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)**

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

1 Complaint.

2 114. Cal. Lab. Code § 200 states that:

3 As used in this article:

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

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

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

14 116. Cal. Lab. Code § 202 states, in relevant part, that:

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

25 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
26 CLASS Members' employment contract.

27 118. Cal. Lab. Code § 203 states:

28 If an employer willfully fails to pay, without abatement or reduction, in

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid
4 or until an action therefor is commenced; but the wages shall not continue
5 for more than 30 days.

6 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
7 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANTS
8 did not timely tender payment of all wages owed as required by law.

9 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members
10 of the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands
11 thirty days of pay as penalty for not paying all wages due at time of termination for all individuals in
12 the CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA
13 LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

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

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

22 C) An order requiring DEFENDANTS to pay minimum and overtime wages and all
23 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
24 CALIFORNIA CLASS; and,

25 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other
27 members of the CALIFORNIA CLASS.


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

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: August 20, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

5
6 By: 
7 Jean-Claude Lapuyade
8 Attorneys for PLAINTIFF

