

**SUMMONS  
(CITACION JUDICIAL)**

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

INTERNATIONAL COFFEE & TEA, LLC, a Delaware limited liability company; INTERNATIONAL COFFEE & TEA HOLDINGS, LLC, a Delaware limited liability company; and DOES 1-50, Inclusive

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
11/22/2023 12:26 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By D. Jackson Aubry, Deputy Clerk

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

ISAAC AYALA, an individual, on behalf of himself, and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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/](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://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 of California - Stanley Most Courthouse  
111 North Hill Street  
Los Angeles, CA 90012

CASE NUMBER:  
(Número del Caso): **23STCV28784**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel:(619) 255-9047 Fax: (858) 404-9203  
ZAKAY LAW GROUP, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

David W. Slayton, Executive Officer/Clerk of Court

DATE: 11/22/2023  
(Fecha)

Clerk, by D. Jackson Aubry, Deputy  
(Secretario) (Adjunto)

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

**NOTICE TO THE PERSON SERVED: You are served**

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



1 **ZAKAY LAW GROUP, APLC**  
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3 Jackland K. Hom (State Bar #327243)  
4 Julieann Alvarado (State Bar #334727)  
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By D. Jackson Aubry, Deputy Clerk

8 **JCL LAW FIRM, APC**  
9 Jean-Claude Lapuyade (State Bar #248676)  
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15 Attorneys for PLAINTIFF

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF LOS ANGELES**

18 ISAAC AYALA, an individual, on behalf of  
19 himself, and on behalf of all persons similarly  
20 situated,

21 Plaintiffs,

22 v.

23 INTERNATIONAL COFFEE & TEA, LLC, a  
24 Delaware limited liability company;  
25 INTERNATIONAL COFFEE & TEA  
26 HOLDINGS, LLC, a Delaware limited liability  
27 company; and DOES 1-50, Inclusive,

28 Defendants.

Case No: **23STCV28784**

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

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

**DEMAND FOR A JURY TRIAL**

PLAINTIFF ISAAC AYALA (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant INTERNATIONAL COFFEE & TEA, LLC (“Defendant International Coffee & Tea”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant INTERNATIONAL COFFEE & TEA HOLDINGS, LLC (“Defendant International Coffee & Tea Holdings”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant International Coffee & Tea and Defendant International Coffee & Tea Holdings were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS operate coffee shops throughout the state of California, including the county of Los Angeles, where PLAINTIFF worked.

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1           5.     PLAINTIFF was employed by DEFENDANT in California from June of 2022 to  
2 August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally  
3 required meal and rest periods and payment of minimum and overtime wages due for all time  
4 worked.

5           6.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
6 defined as all persons who are or previously were employed by Defendant International Coffee &  
7 Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-  
8 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four  
9 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court  
10 (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the  
11 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12           7.     PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
13 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
14 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to  
15 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged  
16 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained  
17 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA  
18 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
19 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
20 other members of the CALIFORNIA CLASS who have been economically injured by  
21 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable  
22 relief.

23           8.     The true names and capacities, whether individual, corporate, subsidiary,  
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are  
25 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious  
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
28 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
2 inclusive, are responsible in some manner for one or more of the events and happenings that  
3 proximately caused the injuries and damages hereinafter alleged.

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

12         10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the  
13 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or  
14 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
15 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
16 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
17 at all relevant times.

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

23         12. DEFENDANT's uniform policies and practices alleged herein were unlawful,  
24 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain  
25 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

26         13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
27 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and  
28 other members of the CALIFORNIA CLASS who has been economically injured by

1 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable  
2 relief.

3 **JURISDICTION AND VENUE**

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

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs  
10 the CALIFORNIA CLASS across California, including in this County, and committed the  
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the  
14 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a  
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically  
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest  
18 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF  
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,  
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest  
22 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS  
23 Members for business expenses, and failed to issue to PLAINTIFF and the members of the  
24 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all  
25 applicable hourly rates in effect during the pay periods and the corresponding amount of time  
26 worked at each hourly rate and/or failing to adhere to Labor Code Section 226(a)(1)-(9).  
27 DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate  
28 and full payment for all time worked as required by California law which allows DEFENDANT

1 to illegally profit and gain an unfair advantage over competitors who comply with the law. To  
2 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
3 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

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

19 18. From time to time during the CLASS PERIOD, as a result of their rigorous work  
20 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
21 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
22 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
23 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
24 more than five (5) hours during some shifts without receiving a meal break. Further,  
25 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
26 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
27 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other  
28 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-

1 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other  
2 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on  
3 duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS  
4 Members with legally required meal breaks is evidenced by DEFENDANT’s business records.  
5 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks  
6 without additional compensation and in accordance with DEFENDANT’s strict corporate policy  
7 and practice.

8 **B. Rest Period Violations**

9 19. From time to time during the CLASS PERIOD, PLAINTIFF and other  
10 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without  
11 being provided ten (10) minute rest periods as a result of their rigorous work requirements and  
12 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied  
13 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four  
14 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some  
15 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and  
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
17 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA  
18 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.  
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
20 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate  
21 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied  
22 their proper rest periods by DEFENDANT and DEFENDANT’s managers.

23 **C. Unreimbursed Business Expenses**

24 20. DEFENDANT as a matter of corporate policy, practice, and procedure,  
25 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
26 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
27 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
28 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers



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

7         21. In the course of their employment, DEFENDANT required PLAINTIFF and other  
8 CALIFORNIA CLASS Members to use their personal vehicles as a result of and in furtherance  
9 of their job duties, including but not limited to performing work-related duties. However,  
10 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS  
11 Members for the use of their personal vehicles. As a result, in the course of their employment  
12 with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred  
13 unreimbursed business expenses that included, but were not limited to, costs related to the use of  
14 their personal vehicles.

15         **D. Wage Statement Violations**

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

24         23. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
26 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
27 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
28 accurate wage statements which failed to show, among other things, all deductions, the total hours

1 worked and all applicable hourly rates in effect during the pay period and the corresponding  
2 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
3 meal and rest periods.

4 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
5 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
6 Cal. Lab. Code § 226.

7 25. As a result, DEFENDANT issued PLAINTIFF and other members of the  
8 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
9 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional  
10 payroll error due to clerical or inadvertent mistake.

11 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
13 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
14 for all hours worked.

15 27. During the CLASS PERIOD, from time-to-time DEFENDANT required  
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
17 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to  
18 work while off-the-clock.

19 28. DEFENDANT directed and directly benefited from the undercompensated off-the-  
20 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

21 29. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
22 assignments, and employment conditions of PLAINTIFF and the other members of the  
23 CALIFORNIA CLASS.

24 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
27 wages earned and owed for all the work they performed.

28 ///

1 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
2 exempt employees, subject to the requirements of the California Labor Code.

3 32. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
4 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
5 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than  
7 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
8 pay.

9 33. DEFENDANT knew or should have known that PLAINTIFF and the other  
10 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

11 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
12 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and  
13 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and  
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
15 hours worked in accordance with applicable law is evidenced by DEFENDANT's business  
16 records.

17 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
18 **and Redeemed Sick Pay**

19 35. From time to time during the CLASS PERIOD, DEFENDANT failed and  
20 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
21 Members for their overtime and double time hours worked, meal and rest period premiums, and  
22 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
23 forfeited wages due to them for working overtime without compensation at the correct overtime  
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.  
25 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
26 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick  
27 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

28 ///

1           36. State law provides that employees must be paid overtime at one-and-one-half times  
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were  
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
4 employee’s performance.

5           37. The second component of PLAINTIFF’S and other CALIFORNIA CLASS  
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid  
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
8 performance for DEFENDANTS. The non-discretionary bonus program provided all employees  
9 paid on an hourly basis with bonus compensation when the employees met the various  
10 performance goals set by DEFENDANTS.

11           38. However, from time to time, when calculating the regular rate of pay in those pay  
12 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double  
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
14 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus  
15 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked  
16 rather than just all non-overtime hours worked. Management and supervisors described the  
17 incentive/bonus program to potential and new employees as part of the compensation package.  
18 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
19 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted  
20 in a systematic underpayment of overtime and double time compensation, meal and rest period  
21 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS  
22 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that  
23 paid sick time for non-exempt employees shall be calculated in the same manner as the regular  
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or  
25 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as  
26 articulated herein, by failing to include the incentive compensation as part of the “regular rate of  
27 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the  
28 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

1           39. In violation of the applicable sections of the California Labor Code and the  
2 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a  
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
5 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed  
6 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain  
7 an unfair advantage over competitors who complied with the law. To the extent equitable tolling  
8 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the  
9 CLASS PERIOD should be adjusted accordingly.

10       **G. Violations for Untimely Payment of Wages**

11           40. Pursuant to California Labor Code section 204, PLAINTIFF and the  
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
13 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
15 meal period premium wages, and rest period premium wages within permissible time period.

16           41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the  
17 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to  
18 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become  
19 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours  
20 previous notice of his or her intention to quit, in which case the employee is entitled to his or her  
21 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from  
22 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or  
23 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

24           42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely  
25 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose  
26 employment ended during the CLASS PERIOD.

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1           **H.     Sick Pay Violations**

2           43.     Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after  
3 July 1, 2015, works in California for the same employer for 30 or more days within a year from  
4 the commencement of employment is entitled to paid sick days as specified in this section.”  
5 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.  
6 From time to time, DEFENDANT failed to have a policy or practice in place that provided  
7 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick  
8 leave.

9           44.     California Labor Code Section 246(i) requires an employer to furnish its  
10 employees with written wage statements setting forth the amount of paid sick leave available.  
11 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
12 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
13 forth the amount of paid sick leave available.

14           **I.    Unlawful Deductions**

15           45.     DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF  
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do  
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT  
18 violated Labor Code § 221.

19           **J.    Timekeeping Manipulation**

20           46.     During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an  
21 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
22 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
24 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and  
25 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and  
26 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all  
27 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and  
28 missed rest breaks.

1           47. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
2 time-to-time, forfeited time worked by working without their time being accurately recorded and  
3 without compensation at the applicable pay rates.

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

11           49. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
12 forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and  
13 benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy  
14 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for  
15 all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business  
16 records.

17 **K. Unlawful Rounding Practices**

18           50. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
19 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other  
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,  
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding  
22 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being  
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did  
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping  
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying  
26 these employees for all their time worked, including the applicable overtime compensation for  
27 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from  
28 time to time, forfeited compensation for their time worked by working without their time being

1 accurately recorded and without compensation at the applicable overtime rates.

2 51. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
3 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time  
4 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding  
5 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work  
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an  
7 off-duty meal break.

8 **L. Tip Pooling**

9 52. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company  
10 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to  
11 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service  
12 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity, tips and/or  
13 service charges to its food and beverage bills. These gratuity, tips and/or service charges  
14 reasonably appear to be gratuity, tips and/or service charges for the service staff. It is typical and  
15 customary in the food and beverage industry that establishments impose gratuity, tips and/or  
16 service charges on the food and beverage bill. Thus, when customers paid these charges, it is  
17 reasonable for them to have believed they were gratuity, tips and/or service charges to be paid to  
18 the service staff. Indeed, because many of these charges are depicted to customers, and the custom  
19 in the food and beverage industry that gratuity, tips and/or service charges are paid for food and  
20 beverage service, customers paid these charges reasonably believing they were remitted to the  
21 service staff. However, DEFENDANTS have not remitted the total proceeds of these gratuity,  
22 tips and/or service charges to the non-managerial employees who serve the food and beverages.  
23 Instead, DEFENDANTS have a policy and practice of using a portion of these gratuity, tips and/or  
24 service charges to pay managers or other non-service employees. As a result, PLAINTIFF and  
25 CALIFORNIA CLASS Members have not received the total proceeds of the gratuity, tips and/or  
26 service charges, to which they are entitled to under California law.

27 53. DEFENDANTS are generally in the business of owning and operating a restaurant  
28 and coffee shop. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other



1 CALIFORNIA CLASS Members were in the “chain of service” and earned gratuity, tips and/or  
2 service charges based on their service for their customers. However, PLAINTIFF and  
3 CALIFORNIA CLASS Members were forced to forfeit portions of their gratuity, tips and/or  
4 service charges, which said gratuities were kept by DEFENDANTS’ employees who were not in  
5 the chain of service from which the gratuity, tips and/or service charges resulted. PLAINTIFF  
6 and other CALIFORNIA CLASS Members contend that any gratuity, tips and/or service charges  
7 kept by DEFENDANTS’ non-service employees were illegal and in violation of California law  
8 because PLAINTIFF and other CALIFORNIA CLASS Members provided the service for to  
9 whom the gratuity, tips and/or service charges should have been paid.

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

18 55. Although tip pooling is not expressly prohibited by the Labor Code, employees  
19 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”  
20 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have  
21 violated and continue to violate the legal requirements for handling pooled tips.

22 **M. Reporting Time Violations**

23 56. Further, DEFENDANTS from time to time required PLAINTIFF and other  
24 CALIFORNIA CLASS Members to report to work, but were furnished less than half their  
25 scheduled shift’s worth of work and were not paid reporting time pay as required by Cal. Code  
26 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, “(A) Each workday  
27 an employee is required to report for work and does report, but is not put to work or is furnished  
28 less than half said employee's usual or scheduled day's work, the employee shall be paid for half

1 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four  
2 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”  
3 In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS  
4 Members to engage in additional work, this sometimes resulted in a second reporting for work in  
5 a single workday. In such a circumstance of a second reporting for work in a single workday,  
6 DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs.,  
7 tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work a second  
8 time in any one workday and is furnished less than two (2) hours of work on the second reporting,  
9 said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall  
10 be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

11 **N. Split-Shift Premium and Overtime Violations**

12 57. During the CLASS PERIOD, DEFENDANT also systematically failed to record and  
13 pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount of wages due for split-  
14 shift premiums. The applicable Industrial Welfare Commission Wage Orders define a “split-shift”  
15 as a “work schedule, which is interrupted by non-paid, non- working, periods established by the  
16 employer, other than bona fide rest or meal periods.” The Industrial Welfare Commission Wage  
17 Orders further provide, “When an employee works a split shift, one (1) hour’s pay at the minimum  
18 wage shall be paid in addition to the minimum wage for that workday, except when the employee  
19 resides at the place of employment.” DEFENDANT, from time-to-time, required PLAINTIFF and  
20 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and  
21 unlawfully failed to pay PLAINTIFF and the CLASS Members split-shift premium wages and  
22 failed to pay PLAINTIFF and CLASS Members the correct overtime compensation for hours  
23 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFF  
24 and the CLASS Members were underpaid during their employment with DEFENDANT.

25 58. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
26 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.  
27 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which they were  
2 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the  
4 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what  
5 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
6 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate  
7 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that  
8 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse  
9 PLAINTIFF for required business expenses related to the use of his personal vehicle, on behalf  
10 of and in furtherance of his employment with DEFENDANT. Moreover, DEFENDANT also  
11 failed to pay PLAINTIFF all tips owed to him. DEFENDANT failed to pay PLAINTIFF all  
12 applicable split-shift premiums owed to him during his employment. To date, DEFENDANT has  
13 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
14 them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy  
15 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

### 16 **CLASS ACTION ALLEGATIONS**

17 59. PLAINTIFF brings this Class Action on behalf of himself, and a California class  
18 defined as all persons who are or previously were employed by Defendant International Coffee  
19 & Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-  
20 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four  
21 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court  
22 (the “CLASS PERIOD”).

23 60. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
24 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
25 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
26 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate  
27 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
28 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

1           61. The members of the class are so numerous that joinder of all class members is  
2 impractical.

3           62. Common questions of law and fact regarding DEFENDANT's conduct, including  
4 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to  
5 accurately calculate the regular rate of pay for overtime compensation, failure to accurately  
6 calculate the regular rate of compensation for missed meal and rest period premiums, failing to  
7 provide legally compliant meal and rest periods, failed to reimburse for business expenses,  
8 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid  
9 at least minimum wage and overtime, exist as to all members of the class and predominate over  
10 any questions affecting solely any individual members of the class. Among the questions of law  
11 and fact common to the class are:

- 12           a. Whether DEFENDANT maintained legally compliant meal period policies and  
13 practices;
- 14           b. Whether DEFENDANT maintained legally compliant rest period policies and  
15 practices;
- 16           c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
17 Members accurate premium payments for missed meal and rest periods;
- 18           d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
19 Members accurate overtime wages;
- 20           e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
21 Members at least minimum wage for all hours worked;
- 22           f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA  
23 CLASS Members for required business expenses;
- 24           g. Whether DEFENDANT issued legally compliant wage statements;
- 25           h. Whether DEFENDANT committed an act of unfair competition by systematically  
26 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS for all time worked;
- 28

1 i. Whether DEFENDANT committed an act of unfair competition by systematically  
2 failing to record all meal and rest breaks missed by PLAINTIFF and other  
3 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
4 of this work, required employees to perform this work and permits or suffers to  
5 permit this work;

6 j. Whether DEFENDANT committed an act of unfair competition in violation of the  
7 UCL, by failing to provide the PLAINTIFF and the other members of the  
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 63. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
10 a result of DEFENDANT's conduct and actions alleged herein.

11 64. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
12 PLAINTIFF have the same interests as the other members of the class.

13 65. PLAINTIFF will fairly and adequately represent and protect the interests of the  
14 CALIFORNIA CLASS Members.

15 66. PLAINTIFF retained able class counsel with extensive experience in class action  
16 litigation.

17 67. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
18 interest of the other CALIFORNIA CLASS Members.

19 68. There is a strong community of interest among PLAINTIFF and the members of  
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
22 sustained.

23 69. The questions of law and fact common to the CALIFORNIA CLASS Members  
24 predominate over any questions affecting only individual members, including legal and factual  
25 issues relating to liability and damages.

26 70. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of  
2 the class individually to redress the wrongs done to them. Without class certification and  
3 determination of declaratory, injunctive, statutory, and other legal questions within the class  
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS  
5 will create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the  
7 CALIFORNIA CLASS which would establish incompatible standards of conduct  
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
10 which would as a practical matter be dispositive of the interests of the other  
11 members not party to the adjudication or substantially impair or impeded their  
12 ability to protect their interests.

13 71. Class treatment provides manageable judicial treatment calculated to bring an  
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
15 the conduct of DEFENDANT.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

23 73. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

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

8 75. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
12 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to  
13 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
14 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

28





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

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

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

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

13           93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
15 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

23           95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
25 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

7 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

25 106. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
26 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
27 they worked, including overtime work.

28

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

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

14           109. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
16 overtime compensation for their time worked for DEFENDANT.

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

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

28

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

8           113. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
9 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
10 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
12 presently unknown to them, and which will be ascertained according to proof at trial.

13           114. DEFENDANT knew or should have known that PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS were undercompensated for their time worked.  
15 DEFENDANT systematically elected, either through intentional malfeasance or gross  
16 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
17 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
18 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages  
19 for their overtime worked.

20           115. In performing the acts and practices herein alleged in violation of California labor  
21 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
22 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
23 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the  
25 consequences to them, and with the despicable intent of depriving them of their property and  
26 legal rights, and otherwise causing them injury in order to increase company profits at the  
27 expense of these employees.  
28

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

11 **FOURTH CAUSE OF ACTION**

12 **Failure To Provide Required Meal Periods**

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

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

18 118. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally  
19 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
20 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
21 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
22 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
23 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often  
24 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
25 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
26 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
27 DEFENDANT’s business records. Further, DEFENDANT failed to provide PLAINTIFF and  
28 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which

1 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,  
2 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without  
3 additional compensation and in accordance with DEFENDANT's strict corporate policy and  
4 practice.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **Failure To Provide Required Rest Periods**

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

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

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

20 122. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
21 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
22 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
23 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten  
24 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second  
25 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
27 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
28 CALIFORNIA CLASS Members were periodically denied their proper rest periods by



1 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate  
2 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the  
3 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide  
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
5 periods is evidenced by DEFENDANT's business records.

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

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

#### 14 **SIXTH CAUSE OF ACTION**

#### 15 **Failure To Reimburse Employees For Required Expenses**

16 **(Cal. Lab. Code §§ 2802)**

17 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

21 126. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 An employer shall indemnify his or her employee for all necessary expenditures or  
23 losses incurred by the employee in direct consequence of the discharge of his or her  
24 duties, or of his or her obedience to the directions of the employer, even though  
25 unlawful, unless the employee, at the time of obeying the directions, believed them  
26 to be unlawful.

27 127. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for expenses which included, but were not limited to, their personal vehicles as a result  
2 of and in furtherance of their job duties, including but not limited to performing work-related  
3 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
4 DEFENDANTS to use their personal cell phones and personal vehicles to execute their essential  
5 job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure  
6 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses  
7 resulting from using their personal vehicles for DEFENDANT within the course and scope of  
8 their employment for DEFENDANT. These expenses were necessary to complete their principal  
9 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this  
10 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the  
11 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse  
12 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is  
13 required to do under the laws and regulations of California.

14 128. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred  
15 by them and the CALIFORNIA CLASS members in the discharge of their job duties for  
16 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the  
17 statutory rate and costs under Cal. Lab. Code § 2802.

## 18 **SEVENTH CAUSE OF ACTION**

### 19 **Failure To Provide Accurate Itemized Statements**

20 **(Cal. Lab. Code § 226)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

22 129. 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  
24 Complaint.

25 130. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
26 "accurate itemized" statement in writing showing:

27 a. Gross wages earned,  
28

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

18           131. When DEFENDANT did not accurately record PLAINTIFF’S and other  
19 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed  
20 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated  
21 Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other  
22 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to  
23 show, among other things, all deductions, the accurate gross wages earned, net wages earned,  
24 the total hours worked and all applicable hourly rates in effect during the pay period and the  
25 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty  
26 payments or missed meal and rest periods.

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

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

10           138. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS  
11 Members’ employment contract.

12           139. Cal. Lab. Code § 203 provides:  
13 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
15 quits, the wages of the employee shall continue as a penalty from the due date thereof at  
the same rate until paid or until an action therefor is commenced; but the wages shall not  
continue for more than 30 days.

16           140. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
17 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
18 missed meal and rest breaks, as required by law.

19           141. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
20 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to  
21 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all  
22 employees who terminated employment during the CLASS PERIOD and demands an accounting  
23 and payment of all wages due, plus interest and statutory costs as allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PAY STATUTORY GRATUITIES**

3 **(Cal. Lab. Code § 351 et seq.)**

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

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

9 143. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial  
10 employees the total proceeds of gratuities added to customers' bills constitutes a violation of  
11 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair  
12 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes  
13 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated  
14 California Labor Code Section 351 in not remitting to the non-managerial service employees the  
15 total gratuities that were charged to customers.

16 144. As a proximate result of the aforementioned violations, PLAINTIFF and  
17 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
18 including the loss of gratuities to which they were entitled. and seek all wages earned and due,  
19 interest, penalties, expenses and costs of suit.

20  
21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and  
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
27 b. An order temporarily, preliminarily and permanently enjoining and restraining  
28 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

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

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3. On all claims:

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

DATED: November 22, 2023

**ZAKAY LAW GROUP, APLC**


By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: November 22, 2023

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF