

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Ste. 230A
San Diego, CA 92121
3 Telephone: (619)892-7095
Facsimile: (858) 404-9203
4 Website: www.zakaylaw.com

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5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
6 Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
7 Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
8 La Jolla, CA 92037
Telephone: (858)551-1223
9 Facsimile: (858) 551-1232
Website: www.bamlawca.com

10 Attorneys for Plaintiffs

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO**

14
15 MAGDALENA HATANAKA, an individual,
on behalf of herself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 v.

19 RESTORE REHABILITATION, LLC, a
Limited Liability Company; and DOES 1-50,
20 Inclusive,

21 Defendants.

Case No: 37-2018-00034780-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant Restore Rehabilitation, LLC (“RESTORE” or “DEFENDANT”) is a
7 limited liability company and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California. RESTORE is a provider of
9 integrated managed care services, focused on controlling health costs and reducing the impact of
10 workers’ compensation claims on injured workers, insurers, third-party administrators and
11 employers. RESTORE serves employer groups, insurance and managed care providers, and
12 benefit administrators. Services include workplace injury management, vocational
13 rehabilitation, catastrophic case management, medical bill auditing, and social security disability
14 claim representation.

15 2. To successfully compete against the other comprehensive medical management
16 service providers, RESTORE substantially reduced its labor costs by placing the labor burden
17 on a smaller number of employees that RESTORE classified as exempt from overtime wages.
18 The goal of overtime laws includes expanding employment throughout the workforce by putting
19 financial pressure on the employer and nurturing a stout job market, as well as the important
20 public policy goal of protecting employees in a relatively weak bargaining position against the
21 unfair scheme of uncompensated overtime work. An employer’s obligation to pay its
22 employees’ wages is more than a matter of private concern between the parties. That obligation
23 is founded on a compelling public policy that employees are entitled to work a livable number
24 of hours at a livable wage. In addition, statutes and regulations that compel employers to pay
25 overtime relate to fundamental issues of social welfare worthy of protection. The requirement to
26 pay overtime wages extends beyond the benefits individual workers receive because overtime
27 wages discourage employers from concentrating work in a few overburdened hands and
28 encourage employers to instead hire additional employees.

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1 3. As part of their business, RESTORE employs a fleet of “Medical Case
2 Managers.” These employees all perform the same primary job duty which is to perform day-
3 to-day routine clerical work in the management of medical conditions of injured workers and/or
4 chronically ill patients and are collectively referred to herein as the "Case Managers" or
5 “CM(s).”

6 4. Plaintiff Hatanaka was employed by DEFENDANT in California as a CM from
7 June 2015 to January 2018. Plaintiff Hatanaka at all times during her employment with
8 DEFENDANT as a CM was classified by DEFENDANT as a salaried employee exempt from
9 overtime pay and the legally required meal and rest breaks.

10 5. PLAINTIFF, as a Case Manager, was engaged in the core, day-to-day business
11 activities of RESTORE. The CMs engage in the finite set of non-exempt clerical tasks of
12 reviewing client’s pre-injury and/or pre-illness position, making appointments with client’s
13 physician or therapist, listening to and reviewing the physician’s or therapist’s diagnosis,
14 obtaining prescriptions, communicating both in-person and by telephone with employers,
15 medical providers, attorneys, insurance carriers and claims adjusters, applying all special
16 instructions required by individual insurance carriers and referral sources, following all pre-
17 established and required case management plans, preparing reports and other required
18 paperwork to document all casework activities, meeting weekly billing requirements, operating
19 office machines, accessing filing cabinets, and attending staff meetings, workshops and/or
20 training programs all in strict compliance with established specific procedures and protocols
21 which govern and control every aspect of the work performed by PLAINTIFF and other Case
22 Managers. These standardized procedures mirror the realities of the workplace evidencing a
23 uniformity of the highly skilled clerical work performed by PLAINTIFF and other Case
24 Managers and negate any exercise of independent judgment and discretion as to any matter of
25 significance and negate any role in the participation of formulating RESTORE’s business
26 policies.

26 6. PLAINTIFF’S and other Case Managers’ job duties include monitoring a
27 recovery plan controlled by a physician and a claims adjuster and they do not have the power to
28 alter that course of treatment. Any advice PLAINTIFF and other Case Managers provide is on
an individual level, far from questions affecting management or general operations of the

1 business. Rather, PLAINTIFF and other Case Managers use their RN training to coordinate
2 care, act as intermediary between patients, adjustors, and doctors and operated in a framework
3 in which these employees do not exercise ultimate decision-making power.

4 7. To perform their finite set of tasks, the CMs do not engage in a supervisory role
5 given the constraints placed upon them by company policy. CMs do not determine what work is
6 to be done by other employees or in what time frame. Furthermore, the CMs also do not have a
7 distinct role in training other employees or determining what training they are to receive. Lastly,
8 PLAINTIFF and other CMs do not have the authority to hire, fire, or promote employees,
9 determine their pay rates or benefits, or give raises as they are unable to make employment-
10 related, personnel decisions. Consequently, PLAINTIFF and the other CMs do not have the
11 authority to decide whether or not an employee should be disciplined for an infraction.
12 Disciplinary decisions are made by the human resources department or dictated by company
13 policies. Overall, PLAINTIFF and other CMs recommendations are given little, if any, weight
14 on all the above issues. As a result, PLAINTIFF and the other CMs are engaged in a type of
15 work that requires no exercise of independent judgment or discretion as to any matter of
16 significance.

17 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
18 defined as all persons who are or previously were employed by DEFENDANT in California as
19 Case Managers and were or are classified as exempt from overtime wages (the "CALIFORNIA
20 CLASS") at any time during the period beginning four (4) years prior to the filing of this
21 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
22 PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
23 Members is under five million dollars (\$5,000,000.00).

24 9. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members
25 is set by RESTORE. PLAINTIFF and other CALIFORNIA CLASS Members work from time
26 to time in excess of eight (8) hours in a workday and/or more than forty (40) hours in any given
27 workweek.

28 10. PLAINTIFF and the other CALIFORNIA CLASS Members are not provided
with overtime compensation and other benefits required by law as a result of being classified as
"exempt" by RESTORE.

1 11. As a matter of company policy, practice, and procedure, RESTORE has
2 uniformly, unlawfully, unfairly and/or deceptively classified every CM as exempt from
3 overtime pay and other related benefits, fails to pay the required overtime compensation and
4 otherwise fails to comply with all applicable labor laws with respect to these CMs.

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

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

22 **THE CONDUCT**

23 14. The finite set of tasks required of the CMs as defined by DEFENDANT are
24 executed by the CMs through the performance of non-exempt labor within a defined manual
25 skill set.

26 15. Although PLAINTIFF and the other CMs spend the vast majority of their time
27 performing these non-exempt tasks, DEFENDANT instituted a blanket classification policy,
28 practice and procedure by which all of these CMs are classified as exempt from overtime
compensation. By reason of this uniform exemption practice, policy and procedure applicable to

1 PLAINTIFF and the other CMs who perform these non-exempt tasks, DEFENDANT
2 committed acts of unfair competition in violation of the California Unfair Competition law, Cal.
3 Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a uniform company-wide
4 policy, practice and procedure which fails to properly classify PLAINTIFF and the other CMs
5 and thereby fails to pay them overtime wages for documented overtime worked. The proper
6 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
7 intentional disregard of the obligation to meet this burden, DEFENDANT fails to pay all
8 required overtime compensation for work performed by the members of the CALIFORNIA
9 CLASS and violates the California Labor Code and regulations promulgated thereunder as
10 herein alleged. In addition, DEFENDANT failed to provide the legally required off-duty meal
11 and rest breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by
12 the applicable Wage Order and Labor Code. DEFENDANT does not have a policy or practice
13 which provides meal and rest breaks to PLAINTIFF and the other CALIFORNIA CLASS
14 Members. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
15 CLASS Members with legally required meal and rest breaks is evidenced by DEFENDANT's
16 business records which contains no record of these breaks.

17 16. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
18 are properly classified as exempt and that(b) DEFENDANT otherwise complies with applicable
19 laws.

20 17. During their employment with DEFENDANT, PLAINTIFF and the other
21 CALIFORNIA CLASS Members, perform non-managerial, non-exempt tasks, but are
22 nevertheless classified by DEFENDANT as exempt from overtime pay and work more than
23 eight (8) hours in a workday and/or more than forty (40) hours in a workweek.

24 18. One crucial requirement to be properly classified as exempt under both the
25 California Professional and Administrative exemptions is the ability to exercise independent
26 discretion and judgment as to matters of significance. PLAINTIFF and the other Case Managers
27 are assigned cases involving injured workers and chronically ill patients and are micro-managed
28 in every aspect with respect to their assigned cases. These employees do not exercise discretion

1 in the sense of making important decisions of significance to the employer's business even
2 though they exercise some measure of discretion and judgment as to the manner in which they
3 perform their tasks. PLAINTIFF and other Case Managers perform routine clerical tasks and
4 followed set guidelines that were mandated and authorized by DEFENDANT.

5 19. Given the circumstances of the job functions performed by PLAINTIFF and the
6 others similarly situated, PLAINTIFF and the others similarly situated are hired as registered
7 nurses for Case Manager positions since their nursing experience is useful for reviewing
8 medical data, but they do not provide "traditional" direct medical services to injured workers or
9 chronically ill patients, render an opinion or make any medical diagnosis (which is prohibited by
10 state law). PLAINTIFF and others similarly situated do not primarily perform office or non-
11 manual staff functions directly related to policymaking and/or the general operation of the
12 DEFENDANT. The work of PLAINTIFF and the others similarly situated do not require the use
13 of "traditional" nursing skills, training, experience and/or knowledge. Instead, PLAINTIFF and
14 the others similarly situated all serve as Case Managers whose primary job duty was and is to
15 perform day-to-day routine clerical work in the management of medical conditions of injured
16 workers and/or chronically ill patients. Courts and State Labor Boards have held that registered
17 nurses, like PLAINTIFF and the others similarly situated, who were not expected to utilize
18 "traditional" nursing skills and instead rely on company manuals to perform administrative
19 services, or who do not need a nursing degree or license to qualify for employment, do not
20 exercise discretion and independent judgment as to matters of significance, and therefore, are
21 non-exempt employees entitled to overtime compensation.

22 20. PLAINTIFF and the other Case Managers employed by DEFENDANT are also
23 not engaged in work of a type that was or now is performed at the level of the policy or
24 management of the DEFENDANT. PLAINTIFF and the other Case Managers employed by
25 DEFENDANT are also not engaged in work requiring knowledge of an advanced type in a field
26 or science or learning customarily acquired by a prolonged course of specialized intellectual
27 instruction and study, but rather their work involves the performance of routine mental, clerical,
28 and/or technical processes. California law provides two alternative avenues to Professional

1 exempt status that PLAINTIFF and other Case Managers fail to meet. To be exempt from
2 overtime pay and minimum wage requirements under the California exemption for
3 “professional” employees, the employees must either be licensed by the State of California and
4 “primarily engaged” in an enumerated profession, or “primarily engaged in an occupation
5 commonly recognized as a learned or artistic profession.” (8 California Code of Regulations §
6 11010 *et seq.*) PLAINTIFF and other Case Managers are not required to be certified by the State
7 of California to perform the finite set of tasks engaged in by Case Managers and/or do not
8 primarily engage in the recognized profession of law, medicine, dentistry, optometry,
9 architecture, engineering, teaching, or accounting. The federal regulations after which the
10 California learned professional exemption was explicitly patterned condition the learned
11 professions exemption upon completion of an advanced course of education. Case Managers do
12 not qualify as exempt learned professionals because an “advanced specialized academic degree”
13 is not a standard prerequisite for entry into the field. To perform the finite set of tasks required
14 of a Case Manager, PLAINTIFF and other CALIFORNIA CLASS Members are not required to
15 hold an advanced degree customarily acquired by a prolonged course of specialized intellectual
16 instruction and study, as distinguished from a general four-year baccalaureate degree. Moreover,
17 it is not sufficient that an employee have an advanced degree, but rather the position the
18 employee occupies and the work performed must actually require such a degree. (California
19 Industrial Wage Order 4-2001(1)(A)(3)(b)(1)) The position of a Case Manager does not actually
20 require an advanced degree. PLAINTIFF and the other Case Managers employed by
21 DEFENDANT are also not engaged in work that is intellectual and varied in character, but
22 rather is routine mental and clerical work that is of such character that the output produced or
23 the result accomplished can be standardized in relation to a given period of time. The work of a
24 Case Manager of DEFENDANT is work wherein PLAINTIFF and the members of the
25 CALIFORNIA CLASS are engaged in the day-to-day business of DEFENDANT.

26 21. CMs are classified as exempt from California overtime and related laws by
27 DEFENDANT, however, these employees do not have managerial duties or authority. CMs, in
28 performing these ongoing day-to-day, non-exempt and non-managerial tasks have no role in

1 supervising employees and have no authority to make employment-related decisions relating to
2 DEFENDANT's employees. Furthermore, the CMs are tightly controlled by company policy
3 and by their supervisors, do not exercise discretion or independent judgment as to matters of
4 significance, and their tasks are not directly related to DEFENDANT's management policies or
5 general business operations.

6 22. PLAINTIFF and all members of the CALIFORNIA CLASS are uniformly
7 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
8 DEFENDANT has failed to take the proper steps to determine whether PLAINTIFFS, and the
9 members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial
10 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
11 exempt from applicable California labor laws. Since DEFENDANT affirmatively and willfully
12 failed to classify PLAINTIFF and the members of the CALIFORNIA CLASS in compliance
13 with California labor laws, DEFENDANT's practices violated and continue to violate California
14 law. In addition, DEFENDANT acted deceptively by falsely and fraudulently telling
15 PLAINTIFF and each member of the CALIFORNIA CLASS that they are exempt from
16 overtime pay when DEFENDANT knew or should have known that this statement is false and
17 not based on known facts. DEFENDANT also acted unfairly by violating the California labor
18 laws, and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing
19 so, DEFENDANT cheated the competition by paying the CALIFORNIA CLASS less than the
20 amount competitors paid who complied with the law and cheated the CALIFORNIA CLASS by
21 not paying them in accordance with California law.

22 23. When PLAINTIFF and other CALIFORNIA CLASS Members work overtime,
23 DEFENDANT also failed to provide PLAINTIFF and the other CALIFORNIA CLASS
24 Members with a wage statement in writing that accurately sets forth gross wages earned, all
25 applicable hourly rates in effect during the pay period and the corresponding amount of time
26 worked at each hourly rate by the PLAINTIFF and the other CALIFORNIA CLASS Members.
27 This conduct violated California Labor Code § 226. The pay stub also does not accurately
28

1 display anywhere PLAINTIFF and the other CALIFORNIA CLASS Members' overtime work
2 and applicable rates of overtime pay for the pay period.

3 24. By reason of this uniform conduct applicable to PLAINTIFF and all the
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
6 (the "UCL"), by engaging in a company-wide policy and procedure which fails to correctly
7 classify PLAINTIFF and the CALIFORNIA CLASS of CMs as non-exempt. The proper
8 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
9 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
10 calculate and/or pay all required overtime compensation for work performed by the members of
11 the CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor Code
12 and the regulations promulgated thereunder as herein alleged.

13 25. Specifically as to PLAINTIFF, they perform the finite set of tasks of reviewing
14 client's pre-injury and/or pre-illness position, making appointments with client's physician or
15 therapist, listening to and reviewing the physician's or therapist's diagnosis, obtaining
16 prescriptions, communicating both in-person and by telephone with employers, medical
17 providers, attorneys, insurance carriers and claims adjusters, applying all special instructions
18 required by individual insurance carriers and referral sources, following all pre-established and
19 required case management plans, preparing reports and other required paperwork to document
20 all casework activities, meeting weekly billing requirements, operating office machines,
21 accessing filing cabinets, and attending staff meetings, workshops and/or training programs. All
22 of these tasks were performed in strict compliance with established specific procedures and
23 protocols which governs and controls every aspect of the work performed by PLAINTIFF.
24 PLAINTIFF used the skill, training, and expertise acquired on the job to perform her job tasks,
25 and performed these job tasks in compliance with the directives given to them by other
26 employees of DEFENDANT. During the CALIFORNIA CLASS PERIOD, PLAINTIFF as a
27 Case Manager, was classified by DEFENDANT as exempt from overtime pay and work in
28 excess of eight (8) hours in a workday and/or more than forty (40) hours in a workweek, but as a

1 result of DEFENDANT's misclassification of PLAINTIFF as exempt from the applicable
2 California Labor Code provisions, PLAINTIFF was not compensated by DEFENDANT for her
3 overtime worked at the applicable overtime rate. DEFENDANT does not have a policy or
4 practice which provides meal and rest breaks to PLAINTIFF and also failed to compensate
5 PLAINTIFF for her missed meal and rest breaks. As a consequence of the foregoing,
6 PLAINTIFF was not provided with accurate and itemized wage statements showing the gross
7 wages earned, the net wages earned, all applicable hourly rates in effect during the pay period,
8 including overtime hourly rates, and the corresponding number of hours worked at each hourly
9 rate, by DEFENDANT during the CALIFORNIA CLASS PERIOD in violation of Cal. Lab.
10 Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime
11 compensation still owed to her or any penalty wages still owed to her under Cal. Lab. Code §
12 203.

13 26. Finally, throughout the CLASS PERIOD, despite the fact that the PLAINTIFF
14 and the other members of the CLASS had earned and accumulated vacation pay at the time their
15 employment terminated, DEFENDANT exercised and continues to exercise an unlawful
16 practice through which DEFENDANT systematically fails to pay the members of the CLASS,
17 including the PLAINTIFF, for all of the vacation pay they have earned and accumulated
18 throughout their employment with DEFENDANT. DEFENDANT also made and continues to
19 make false representations to the PLAINTIFF and the other members of the CLASS with
20 respect to the vacation pay they earned and accumulated throughout the course of their
21 employment with DEFENDANT, including, but not limited to, falsely representing that upon
22 the termination of their employment with DEFENDANT, the PLAINTIFF and the other
23 members of the CLASS: (a) Are not entitled to all the vacation pay they have earned and
24 accumulated during the course of the their employment; and (b) Have already been paid all of
25 their earned vacation time, when in fact, they have not been compensated for all earned and
26 accumulated vacation time.

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THE CALIFORNIA CLASS

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

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

14 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 willfully, engages in a practice whereby DEFENDANT systematically, unfairly, unlawfully and
18 deceptively instituted a practice to ensure that the employees employed in a CM position are
19 not properly classified as non-exempt from the requirements of the California Labor Code §§
20 510, *et set.*

21 30. DEFENDANT has the burden of proof to make sure that each and every
22 employee is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510,
23 *et seq.* DEFENDANT, however, as a matter of uniform and systematic policy and procedure
24 had in place during the CALIFORNIA CLASS PERIOD and still has in place a policy and
25 practice that misclassifies the CALIFORNIA CLASS Members as exempt. DEFENDANT's
26 uniform policy and practice in place at all times during the CALIFORNIA CLASS PERIOD and
27 currently in place is to systematically classify each and every CALIFORNIA CLASS Member
28 as exempt from the requirements of the California Labor Code §§ 510, *et seq.* This common

1 business practice applicable to each and every CALIFORNIA CLASS Member can be
2 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
3 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
4 elements of this claim.

5 31. At no time during the CALIFORNIA CLASS PERIOD has any Case Manager
6 been reclassified as non-exempt from the applicable requirements of California Labor Code §§
7 510, *et seq.* after each CALIFORNIA CLASS Member was initially, uniformly, and
8 systematically classified as exempt upon being hired.

9 32. Any individual declarations of any employees offered at this time purporting to
10 indicate that one or more Case Managers may have been properly classified is of no force or
11 affect absent contemporaneous evidence that DEFENDANT's uniform system did not
12 misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt pursuant to
13 Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
14 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
15 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,
16 PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT to
17 provide restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to retribute
18 these funds to PLAINTIFF and the CALIFORNIA CLASS Members according to proof.

19 33. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
20 CLASS Members is impracticable.

21 34. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
22 California law by:

- 23 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
24 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
25 company policies, practices and procedures that uniformly misclassified
26 PLAINTIFF and the members of the CALIFORNIA CLASS as exempt;
- 27 b. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,

1 unfairly, and/or deceptively having in place a company policy, practice and
2 procedure that accurately determines the amount of working time spent by
3 PLAINTIFF and the members of the CALIFORNIA CLASS performing non-
4 exempt labor;

5 c. Committing an act of unfair competition in violation of the California Unfair
6 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by having in place
7 a company policy, practice and procedure that fails to reclassify as non-exempt
8 those members of the CALIFORNIA CLASS whose actual tasks were comprised
9 of non-exempt job functions;

10 d. Committing an act of unfair competition in violation of the UCL, by violating
11 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to
12 PLAINTIFF and the members of the CALIFORNIA CLASS who are improperly
13 classified as exempt, and retaining the unpaid overtime to the benefit of
14 DEFENDANT; and,

15 e. Committing an act of unfair competition in violation of the UCL, by failing to
16 provide mandatory meal and/or rest breaks to PLAINTIFF and the
17 CALIFORNIA CLASS members.

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

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

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

26 c. The claims of the representative PLAINTIFF are typical of the claims of each
27 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
28 of the CALIFORNIA CLASS, was classified as exempt upon hiring based on the

1 defined corporate policies and practices and labored under DEFENDANT's
2 systematic procedure that fails to properly classify as non-exempt PLAINTIFF
3 and the members of the CALIFORNIA CLASS. PLAINTIFF sustained economic
4 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
5 members of the CALIFORNIA CLASS were and are similarly or identically
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
7 misconduct engaged in by DEFENDANT by deceptively advising all Case
8 Managers that they were exempt from overtime wages based on the defined
9 corporate policies and practices, and unfairly failing to pay overtime to these
10 employees who were improperly classified as exempt; and

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

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

- 20 a. Without class certification and determination of declaratory, injunctive, statutory
21 and other legal questions within the class format, prosecution of separate actions
22 by individual members of the CALIFORNIA CLASS will create the risk of:
- 23 i. Inconsistent or varying adjudications with respect to individual members
24 of the CALIFORNIA CLASS which would establish incompatible
25 standards of conduct for the parties opposing the CALIFORNIA CLASS;
26 and/or;
- 27 ii. Adjudication with respect to individual members of the CALIFORNIA
28 CLASS which would as a practical matter be dispositive of interests of

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the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to take proper steps to determine whether the Case Managers were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

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

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

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

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- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 - 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 39. PLAINTIFF further brings the Second, Third, Fourth Fifth and Sixth causes of
10 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
11 CLASS who were employed by DEFENDANT in California (the "CALIFORNIA LABOR
12 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
13 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
14 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
15 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
16 (\$5,000,000.00).

17 40. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly,
20 willfully, and systematically misclassified the PLAINTIFF and the other members of the
21 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime
22 wages and other labor laws based on DEFENDANT's comprehensive policies and procedures in
23 order to avoid the payment of overtime wages by misclassifying their positions as exempt from
24 overtime wages and other labor laws. To the extent equitable tolling operates to toll claims by
25 the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
26 SUB-CLASS PERIOD should be adjusted accordingly.

27 41. DEFENDANT maintains records from which the Court can ascertain and
28 identify by name and job title, each of DEFENDANT's employees who have been

1 systematically, intentionally and uniformly misclassified as exempt as a matter of
2 DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek leave to
3 amend the Complaint to include these additional job titles when they have been identified.

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

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

- 8 a. Whether DEFENDANT unlawfully fails to pay overtime compensation to
9 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
10 California Labor Code and California regulations and the applicable California
11 Wage Order;
- 12 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are non-
13 exempt employees entitled to overtime compensation for overtime worked under
14 the overtime pay requirements of California law;
- 15 c. Whether DEFENDANT's policy and practice of classifying the CALIFORNIA
16 LABOR SUB-CLASS Members as exempt from overtime compensation and
17 failing to pay the CALIFORNIA LABOR SUB-CLASS Members overtime
18 violate applicable provisions of California law;
- 19 d. Whether DEFENDANT unlawfully fails to keep and furnish CALIFORNIA
20 LABOR SUB-CLASS Members with accurate records of overtime worked; and,
- 21 e. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and

23 44. DEFENDANT, as a matter of company policy, practice and procedure,
24 erroneously classifies all Case Managers as exempt from overtime wages and other labor laws.
25 All Case Managers, including PLAINTIFF, perform the same finite set of tasks and are paid by
26 DEFENDANT according to uniform and systematic company procedures, which, as alleged
27 herein above, fails to correctly pay overtime compensation. This business practice has been
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1 uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and
2 therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- 5 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing to
6 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
7 the correct overtime pay for a workday longer than eight (8) hours and/or a
8 workweek longer than forty (40) hours for which DEFENDANT is liable
9 pursuant to Cal. Lab. Code § 1194;
- 10 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
11 and the other members of the CALIFORNIA CLASS with all legally required
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
13 rest breaks;
- 14 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
16 classified as exempt with an accurate itemized statement in writing showing the
17 gross wages earned, the net wages earned, all applicable hourly rates in effect
18 during the pay period and the corresponding amount of time worked at each
19 hourly rate by the employee when these employees worked overtime from time
20 to time in a pay period;
- 21 d. Violating Cal. Lab. Code § 203, which provides that when an employee is
22 discharged or quits from employment, the employer must pay the employee all
23 wages due without abatement, by failing to tender full payment and/or restitution
24 of wages owed or in the manner required by California law to the members of the
25 CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

26 46. This Class Action meets the statutory prerequisites for the maintenance of a
27 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
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- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was improperly classified as exempt and denied overtime pay as a result of DEFENDANT's systematic classification practices. PLAINTIFF and all the other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIALABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

3 i. Inconsistent or varying adjudications with respect to individual members
4 of the CALIFORNIA LABOR SUB-CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA LABOR SUB-CLASS; or

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

11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR
13 SUB-CLASS, making appropriate class-wide relief with respect to the
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
15 uniformly classified and treated the Case Managers as exempt and, thereafter,
16 uniformly failed to take proper steps to determine whether the Case Managers
17 were properly classified as exempt, and thereby denied these employees overtime
18 wages as required by law;

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

25 i. The interests of the members of the CALIFORNIA LABOR SUB-
26 CLASS in individually controlling the prosecution or defense of separate
27 actions in that the substantial expense of individual actions will be
28 avoided to recover the relatively small amount of economic losses

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sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
2 employed by DEFENDANT in California during the CALIFORNIA LABOR
3 SUB-CLASS PERIOD; and

- 4 i. Class treatment provides manageable judicial treatment calculated to bring an
5 efficient and rapid conclusion to all litigation of all wage and hour related claims
6 arising out of the conduct of DEFENDANT.

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8 **JURISDICTION AND VENUE**

9 49. 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
11 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
12 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

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20 **FIRST CAUSE OF ACTION**

21 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

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

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

22 56. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice is to represent to PLAINTIFF
24 and other CALIFORNIA CLASS Members that they are exempt from overtime pay when in
25 fact these representations are false and likely to deceive, for which this Court should issue
26 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution
27 of wages wrongfully withheld.
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1 57. 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 58. By the conduct alleged herein, DEFENDANT has also engaged and continues to
6 engage in a business practice which is likely to deceive DEFENDANT’s employees.
7 DEFENDANT’s conduct is likely to deceive employees because DEFENDANT represents to
8 employees that (i) they earned and accumulated vacation hours during their employment, and
9 (ii) they would be paid in full for all vested vacation in a lump sum payment upon employment
10 termination, when in fact DEFENDANT denied payment of vested vacation upon termination,
11 and implemented an illegal policy of “use-it or lose-it” policy with respect to accrued vacation
12 hours. As a result, DEFENDANT’s policies, practices and procedures alleged herein constitute
13 a deceptive business practice.

14 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
15 engage in a business practice which is unfair to DEFENDANT’s employees. DEFENDANT’s
16 conduct is unfair because denying vacation pay that employees earned through the performance
17 of labor, after representing to the employees that they earned and accumulated vacation pay and
18 are entitled such compensation upon employment termination, is immoral, unethical,
19 oppressive, and unscrupulous, and violates public policy. As a result, DEFENDANT’s policies,
20 practices and procedures alleged herein constitute an unfair business practice.

21 60. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
22 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

24 61. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
26 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
27 for each workday in which a second off-duty meal period was not timely provided for each ten
28 (10) hours of work.

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

4 63. PLAINTIFF, and the other members of the CLASS, further demand such relief
5 as may be necessary to restore to them the money which DEFENDANT may have acquired, or
6 of which the PLAINTIFF, and other members of the CLASS, have been deprived, by means of
7 the above described unlawful vacation policy, unfair and/or deceptive business practices.

8 64. By and through the unlawful and unfair business practices described herein,
9 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
10 other members of the CALIFORNIA CLASS, and has deprived them of valuable rights and
11 benefits guaranteed by law and contract, all to the detriment of these employees and to the
12 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
13 who comply with the law.

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

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

24 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
26 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
27 engaging in any unlawful and unfair business practices in the future.

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

8 **SECOND CAUSE OF ACTION**

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

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

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

16 70. Cal. Lab. Code § 510 states in relevant part:
17 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
18 workday and any work in excess of 40 hours in any one workweek and the first eight
19 hours worked on the seventh day of work in any one workweek shall be compensated at
20 the rate of no less than one and one-half times the regular rate of pay for an employee.
Any work in excess of 12 hours in one day shall be compensated at the rate of no less
than twice the regular rate of pay for an employee. In addition, any work in excess of
eight hours on any seventh day of a workweek shall be co ice the regular rate of pay of
an employee.

21 71. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of
22 labor is entitled to one day's rest therefrom in seven."

23 72. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees
24 to work more than six days in seven."

25 73. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime
26 rate of compensation required to be paid to a nonexempt full-time salaried employee, the
27 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

28 74. Cal. Lab. Code § 1194 states

1 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
2 than the legal minimum wage or the legal overtime compensation applicable to the
3 employee is entitled to recover in a civil action the unpaid balance of the full amount of
4 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
5 fees, and costs of suit.

6 75. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
7 conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. The employment of any employee for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

10 76. DEFENDANT has intentionally and uniformly designated certain employees as
11 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic
12 expectations and actual overall requirements of the job, including PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS who work on the production and non-
14 managerial side of DEFENDANT's business. This is done in an illegal attempt to avoid
15 payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
16 Welfare Commission requirements.

17 77. For an employee to be exempt as a bona fide "executive," all the following criteria
18 must be met and DEFENDANT has the burden of proving that:

- 19 a. The employee's primary duty must be management of the enterprise, or of a
20 customarily recognized department or subdivision; and,
- 21 b. The employee must customarily and regularly direct the work of at least two (2)
22 or more other employees; and,
- 23 c. The employee must have the authority to hire and fire, or to command particularly
24 serious attention to his or her recommendations on such actions affecting other
25 employees; and,
- 26 d. The employee must customarily and regularly exercise discretion and independent
27 judgment; and,
- 28 e. The employee must be primarily engaged in duties which meet the test of
exemption.

No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all
fail to meet the requirements of being an "executive" within the meaning of the applicable Wage
Order.

1 78. For an employee to be exempt as a bona fide "administrator," all of the following
2 criteria must be met and DEFENDANT has the burden of proving that:

- 3 a. The employee must perform office or non-manual work directly related to
4 management policies or general business operation of the employer; and,
- 5 b. The employee must customarily and regularly exercise discretion and
6 independent judgment; and,
- 7 c. The employee must regularly and directly assist a proprietor or an exempt
8 administrator; or,
- 9 d. The employee must perform, under only general supervision, work requiring
10 special training, experience, or knowledge; or,
- 11 e. The employee must execute special assignments and tasks under only general
12 supervision; and,
- 13 f. The employee must be primarily engaged in duties which meet the test of
14 exemption.

15 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all
16 fail to meet the requirements of being an "administrator" within the meaning of the applicable
17 Wage Order.

18 79. The Industrial Welfare Commission, in Wage Order 4-2001, at section
19 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
20 with to place an employee in the "professional" exempt category. For an employee to be exempt
21 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the
22 burden of proving that:

- 23 a. The employee is primarily engaged in an occupation commonly recognized as a
24 learned or artistic profession. For the purposes of this subsection, "learned or
25 artistic profession" means an employee who is primarily engaged in the
26 performance of:
 - 27 i. Work requiring knowledge of an advanced type in a field or science or
28 learning customarily acquired by a prolonged course of specialized
 intellectual instruction and study, as distinguished from a general

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academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part or necessarily incident to any of the above work;

or,

ii. Work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee or work that is an essential part of or incident to any of the above work; and,

iii. Whose work is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be standardized in relation to a given period of time.

b. The employee must customarily and regularly exercise discretion and independent judgment; and,

c. The employee earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment.

No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all fail to meet the requirements of being an "administrator" within the meaning of the applicable Wage Order.

80. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not fit the definition of an exempt executive, administrative, or professional employee because:

- a. They did not work as executives or administrators; and
- b. The professional exemption does not apply to the PLAINTIFF, nor to the other members of the CALIFORNIA LABOR SUB-CLASS because they did not meet all the applicable requirements to work under the professional exemption for the reasons set forth above in the Complaint.

1 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS worked more than eight (8) hours
3 in a workday and/or more than forty (40) hours in a workweek.

4 82. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS overtime compensation for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194& 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime.

9 83. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
10 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS for their overtime work, PLAINTIFF and the other members of the CALIFORNIA
12 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
13 which are presently unknown to them and which will be ascertained according to proof at trial.

14 84. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS are misclassified as exempt and
16 DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
18 procedure.

19 85. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
20 SUB-CLASS request recovery of overtime compensation, according to proof, interest, statutory
21 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
22 provided by the California Labor Code and/or other applicable statutes. To the extent overtime
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
26 under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as
27 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

 86. In performing the acts and practices herein alleged in violation of labor laws and
refusing to provide the requisite overtime compensation, DEFENDANT acted and continues to

1 act intentionally, oppressively, and maliciously toward PLAINTIFF, and toward the other
2 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of
3 their legal rights, or the consequences to them, and with the despicable intent of depriving them
4 of their property and legal rights and otherwise causing them injury in order to increase
5 corporate profits at the expense of PLAINTIFF and the members of the CALIFORNIA LABOR
6 SUB-CLASS.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

15 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
16 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
17 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
18 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
19 did not prevent these employees from being relieved of all of their duties for the legally required
20 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
22 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
23 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
24 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
25 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
26 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
27 strict corporate policy and practice.
28

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

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

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10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
12 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

28 93. DEFENDANT further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
2 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for
3 each workday that rest period was not provided.

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

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8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

10 **(Cal. Lab. Code § 226)**

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

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

15 96. Cal. Labor Code § 226 provides that an employer must furnish employees with
16 an “accurate itemized” statement in writing showing:

- 17 a. Gross wages earned;
 - 18 b. Total hours worked by the employee, except for any employee whose
19 compensation is solely based on a salary and who is exempt from payment of
20 overtime under subdivision (a) of Section 515 or any applicable order of the
21 Industrial Welfare Commission;
 - 22 c. The number of piece rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis;
 - 24 d. All deductions, provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item;
 - 26 e. Net wages earned;
 - 27 f. The inclusive dates of the period for which the employee is paid;
- 28

- 1 g. The name of the employee and his or her social security number, except that by
- 2 January 1, 2008, only the last four digits of his or her social security number or
- 3 an employee identification number other than a social security number may be
- 4 shown on the itemized statement;
- 5 h. The name and address of the legal entity that is the employer; and
- 6 i. All applicable hourly rates in effect during the pay period and the corresponding
- 7 number of hours worked at each hourly rate by the employee.

8 97. In the pay periods PLAINTIFF and other CALIFORNIA CLASS Members
9 worked overtime DEFENDANT violated Labor Code § 226, in that DEFENDANT failed to
10 provide an accurate wage statement in writing that properly and accurately itemizes the actual
11 time worked by PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
12 CLASS at the effective regular rates of pay and the effective overtime rates of pay.

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

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal. Lab. Code § 203)**

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

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

9
10 100. Cal. Lab. Code § 203 provides:

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

16 101. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
17 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages
18 and/or accrued vacation compensation, to these employees who actually worked overtime
19 and/or had accrued vacation compensation at the time of termination, as required by law.

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

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PRAYER FOR RELIEF

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

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4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of Action
17 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to
18 Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
22 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per member of the
27 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
28 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and

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- an award of costs for violation of Cal. Lab. Code § 226; and
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: July 12 2018

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: July 12, 2018

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF