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

12 LORI A. PHIPPS, an individual, on behalf
13 of herself, on behalf of all persons similarly
14 situated, and on behalf of the State of
California,

15 Plaintiff,

16 v.

17 BHCW, INC., a Corporation (dba) SOAPY
18 JOE'S CAR WASH; SOAPY JOE'S INC. a
California Corporation, and DOES 1-50,
19 Inclusive,

20 Defendants.

Case No: 37-2019-00017673-CU-OE-CTL

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 ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL.LAB CODE § 226,;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant BHCW, INC. dba SOAPY JOE’S CAR WASH (“DEFENDANT
7 BHCW”) is a Corporation, and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. Defendant SOAPY JOE’S INC. (“DEFENDANT SOAPY JOE’S”) is a California
10 Corporation, and at all relevant times mentioned herein conducted and continues to conduct
11 substantial and regular business throughout California.

12 3. Defendant BHCW and Defendant SOAPY JOE’S were the joint employers of
13 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
14 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
15 herein and collectively referred to herein as “DEFENDANTS”.

16 4. DEFENDANTS, doing business as Soapy Joe’s Car Wash, operate multiple gas
17 stations, convenience stores and car wash facilities throughout San Diego County.

18 5. PLAINTIFF was employed by DEFENDANTS in California from April of 2018
19 to October of 2018 as a Customer Service Associate and was at all times classified by
20 DEFENDANTS as a non-exempt employee, paid on an hourly basis, and entitled to the legally
21 required meal and rest periods and payment of minimum and overtime wages due for all time
22 worked.

23 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
24 defined as all individuals who are or previously were employed by DEFENDANT BHCW and/or
25 DEFENDANT SOAPY JOE’S in California and classified as non-exempt employees (the
26 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
27 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
28 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
CLASS Members is under five million dollars (\$5,000,000.00).

1 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees for all their time worked. DEFENDANT's
5 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
6 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
7 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
8 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
9 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
10 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
11 all other appropriate legal and equitable relief.

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

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

THE CONDUCT

1
2 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. DEFENDANTS required
6 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
7 they were under DEFENDANTS’ control. Specifically, DEFENDANTS required PLAINTIFF to
8 work while clocked out during what was supposed to be PLAINTIFF’s off-duty meal break.
9 PLAINTIFF was often interrupted by work assignments during her off-duty meal break. Indeed,
10 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
11 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
12 compensation by regularly working without their time being accurately recorded and without
13 compensation at the applicable minimum wage and overtime rates. DEFENDANTS’ uniform
14 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
15 time worked is evidence by DEFENDANTS’ business records.

16 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
17 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
19 overtime hours. As a result, DEFENDANTS were able to, and did in fact systematically,
20 unlawfully and unilaterally, alter the time recorded in DEFENDANTS’ timekeeping system for
21 PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
22 employees the applicable overtime compensation for overtime working and to avoid paying these
23 employees for missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS
24 Members forfeited time worked by regularly working without their time being accurately recorded
25 and without compensation at the applicable overtime rates.

26 12. The mutability of the timekeeping system allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS’
28 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA

1 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
2 were not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice denying employees uninterrupted thirty (30) minute
4 off-duty meal breaks each day or otherwise compensating them for missed meal breaks. As a
5 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members
6 were also from time to time unable to take thirty (30) minute off duty meal breaks and were not
7 fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
8 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
9 hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to
10 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
11 for some workdays in when these employees were required by DEFEDNANTS to work ten (10)
12 hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited
13 meal breaks without additional compensation and in accordance with DEFENDANTS' strict
14 corporate policy and practice. DEFENDANTS failed to maintain adequate staffing levels while
15 increasing the production levels for each employee at the busy car washes, they provided services
16 for.

17 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
19 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
20 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
21 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for
22 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second
23 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
24 from time to time. PLAINTIFF and other CALIFORNIA 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 CLASS Members were from time to time denied their
27 proper rest periods by DEFENDANT and DEFENDANTS' managers.

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1 14. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
2 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for their overtime worked. DEFENDANTS unlawfully and unilaterally failed to
4 accurately calculate wages for overtime worked by PLAINTIFF and other members of the
5 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
6 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
7 forfeited wages due them for working overtime without compensation at the correct overtime
8 rates. DEFENDANTS' uniform policy and practice to not pay the members of the CALIFORNIA
9 CLASS the correct overtime rate for all overtime worked in accordance with applicable law is
10 evidenced by DEFENDANTS' business records.

11 15. DEFENDANTS, as a matter of corporate policy, practice and procedure,
12 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS
13 and the other CALIFORNIA CLASS Members for required business expenses incurred by
14 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
15 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
16 are required to indemnify employees for all expenses incurred in the course and scope of their
17 employment. Cal. Lab Code §2802 expressly states that "an employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
20 even though unlawful, unless the employee, at the time of obeying the directions, believed them
21 to be unlawful."

22 16. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
23 Members as a business expense, were required by Defendant to use their own personal cellular
24 phones, and to purchase and wear company-mandated uniforms, as a result of, and in furtherance
25 of their job duties as employees for DEFENDANTS, but were not reimbursed or indemnified by
26 DEFENDANTS. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were
27 required by DEFENDANTS to use their personal cell phones for work related issues, and to
28 purchase and wear company-mandated uniforms. As a result, in the course of their employment

1 with DEFENDANTS, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
2 unreimbursed business expenses which included but were not limited to, costs, related to the use
3 of their personal cellular phones and the purchasing of company-mandated uniforms, all on behalf
4 of and for the benefit of DEFENDANTS.

5 17. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
6 miss meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
8 to show, among other things, the correct wages paid for missed meal and rest breaks. Cal. Lab.
9 Code § 226 provides that every employer shall furnish each of his or her employees with an
10 accurate itemized wage statement in writing showing, among other things, gross wages earned
11 and all applicable hourly rates in effect during the pay period and the corresponding amount of
12 time worked at each hourly rate. Additionally, the wage statements DEFENDANTS issued to
13 PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a)
14 in that DEFENDANTS failed to correctly list the correct name of the legal entity that was the
15 employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from the violations
16 listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage
17 statement that lists all the requirements under California Labor Code 226 et seq. As a result,
18 DEFENDANTS from time to time provided PLAINTIFF and the other members of the
19 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

20 18. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
22 matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
24 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is intended to
25 purposefully avoid the payment for all time worked as required by California law which allows
26 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
27 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
28 against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

1 19. By reason of this uniform conduct applicable to PLAINTIFF and all
2 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the
4 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
5 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
6 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the
7 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation
8 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
9 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
10 California Labor Code and regulations promulgated thereunder as herein alleged.

11 20. Specifically, as to PLAINTIFF, DEFENDANTS failed to provide all the legally
12 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
13 Code and failed to pay her all minimum and overtime wages due to her. The nature of the work
14 performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the
15 legally required off-duty meal periods. As a result, DEFENDANTS’ failure to provide
16 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS’ business
17 records. As a result of DEFENDANTS not accurately recording all missed meal and rest periods
18 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
19 DEFENDANTS violated California law, and in particular, Labor Code Section 226(a). To date,
20 DEFENDANTS have yet to pay PLAINTIFF all of her wages due to her and DEFENDANTS
21 have failed to pay any penalty wages owed to her under California Labor Code Section 203. The
22 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

23 21. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS’ company
24 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
25 forfeit gratuities left for them by customers to DEFENDANTS’ agents who provided no service
26 to the customers that resulted in the gratuity.

27 22. DEFENDANTS are generally in the business of managing and operating car wash
28 facilities. During the CALIFORNIA CLASS PERIOD PLAINTIFF and other CALIFORNIA

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

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

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

22 25. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
23 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
24 CLASS for all their gratuities earned while working for DEFENDANTS. DEFENDANTS
25 systematically, unlawfully and unilaterally failed to accurately calculate wages for gratuities
26 earned by the PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid
27 paying these employees the correct compensation. As a result, the PLAINTIFF and the other
28 members of the CALIFORNIA CLASS forfeited wages due them for regularly working without

1 all compensation they are earned being paid to them. DEFENDANTS’ uniform policy and
2 practice to not pay the members of the CALIFORNIA CLASS all of their gratuities owed to them
3 in accordance with applicable California state law is evidenced by DEFENDANTS’ business
4 records.

5 26. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission (“IWC” Wage Order), DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally, knowingly and systematically
8 failed to compensate the PLAINTIFF and the other members of the CALIFORNIA CLASS for
9 all of their gratuities earned while working in the “chain of service” for DEFENDANTS. This
10 uniform policy and practice of DEFEDNANTS was intended to purposefully avoid the payment
11 of the correct gratuity compensation as required by California law which allowed DEFENDANTS
12 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
13 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
14 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

15 **JURISDICTION AND VENUE**

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

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

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THE CALIFORNIA CLASS

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2 29. 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 BHCW and/or
6 DEFENDANT SOAPY JOE'S in California and classified as non-exempt employees (the
7 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
8 of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
9 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
10 Members is under five million dollars (\$5,000,000.00).

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

14 31. DEFENDANTS, 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, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
18 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
19 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
20 permits or suffers to permit this work.

21 32. DEFENDANTS have the burden of proof to make sure that each and every
22 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
23 required by California laws. The DEFENDANTS, however, as a matter of uniform and systematic
24 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still
25 fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
26 Member is paid as required by law. This common business practice is applicable to each and every
27 CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair,
28

1 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
2 causation, damages, and reliance are not elements of this claim.

3 33. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 34. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
9 policies, practices and procedures that failed to pay all wages due the
10 CALIFORNIA CLASS for all time worked, and failed to accurately record the
11 applicable rates of all time worked by the CALIFORNIA CLASS;
- 12 b. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
14 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
15 members;
- 16 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
17 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
18 company policies, practices and procedures that uniformly and systematically
19 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
20 CLASS for all time worked, including minimum wages owed and overtime wages
21 owed for work performed by these employees; and
- 22 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
23 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
24 company policies, practices and procedures that uniformly and systematically
25 forced PLAINTIFF and other members of the CALIFORNIA CLASS to forfeit
26 gratuities as described herein.

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

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

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

9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
11 the CALIFORNIA CLASS, was subjected to the uniform employment practices
12 of DEFENDANTS and was a non-exempt employee paid on an hourly basis and
13 paid additional non-discretionary incentive wages who was subjected to the
14 DEFENDANTS' practice and policy which failed to pay the correct rate of
15 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
16 CALIFORNIA CLASS and thereby systematically under pays overtime
17 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
18 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and

22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who are
24 competent and experienced in Class Action litigation. There are no material
25 conflicts between the claims of the representative PLAINTIFF and the members
26 of the CALIFORNIA CLASS that would make class certification inappropriate.
27 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
28 CALIFORNIA CLASS Members.

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

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

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

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

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

20 i. With respect to the First Cause of Action, the final relief on behalf of the
21 CALIFORNIA CLASS sought does not relate exclusively to restitution
22 because through this claim PLAINTIFF seek declaratory relief holding that
23 the DEFENDANTS' policy and practices constitute unfair competition,
24 along with declaratory relief, injunctive relief, and incidental equitable
25 relief as may be necessary to prevent and remedy the conduct declared to
26 constitute unfair competition;

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other available
3 methods for the fair and efficient adjudication of the controversy, including
4 consideration of:

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

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

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

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

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

27 iv. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will obviate

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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 DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual 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 DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA CLASS.

10 38. DEFENDANTS maintain records from which the Court can ascertain and identify
11 by job title each of DEFENDANTS' employees who as have been systematically, intentionally
12 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
14 of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
17 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
18 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
19 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
20 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
21 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
22 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 40. DEFENDANTS, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANTS failed to correctly calculate
28 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA

1 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work, required
2 employees to perform this work and permitted or suffered to permit this overtime work.
3 DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
4 wages which these employees are entitled in order to unfairly cheat the competition and
5 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS
7 PERIOD should be adjusted accordingly.

8 41. DEFENDANTS maintain records from which the Court can ascertain and identify
9 by name and job title, each of DEFENDANTS' employees who have been systematically,
10 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
11 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any
12 additional job titles of similarly situated employees when they have been identified.

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

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

- 17 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
- 21 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 overtime compensation for overtime worked under the overtime pay requirements
23 of California law;
- 24 c. Whether DEFENDANTS failed to accurately record the applicable overtime rates
25 for all overtime worked PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS;

- 1 d. Whether DEFENDANTS failed to accurately record the applicable minimum
2 wage for all time worked PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS;
- 4 e. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
6 thirty (30) minute meal breaks and rest periods;
- 7 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
8 conduct;
- 9 g. The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and
- 11 h. Whether DEFENDANTS' conduct was willful.

12 44. DEFENDANTS, as a matter of company policy, practice and procedure, failed to
13 properly compensate the CALIFORNIA LABOR SUB-CLASS Members. All of the
14 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt
15 employees who were paid on an hourly basis by DEFENDANTS according to uniform and
16 systematic company procedures as alleged herein above. This business practice was uniformly
17 applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore,
18 the propriety of this conduct can be adjudicated on a class-wide basis.

19 45. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
22 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
23 pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194 & §
24 1198;
- 25 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
26 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
27 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
28 Cal. Lab. Code §§ 1194 and 1197;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTSs practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANTS’ employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

1 uniformly failed to pay all wages due, including the correct overtime rate, for all
2 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
3 required by law;

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

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

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

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

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

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

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

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

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

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

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

4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANTS are sufficient to adequately compensate the members of the
6 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

7 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
8 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

10 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
12 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
13 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
14 PERIOD; and

15 i. Class treatment provides manageable judicial treatment calculated to bring an
16 efficient and rapid conclusion to all litigation of all wage and hour related claims
17 arising out of the conduct of DEFENDANTS as to the members of the
18 CALIFORNIA LABOR SUB-CLASS.

19 **FIRST CAUSE OF ACTION**

20 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

26 50. DEFENDANTS are a "person" as that term is defined under Cal. Bus. And Prof.
27 Code § 17021.

1 51. 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 competition
4 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
9 defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 52. By the conduct alleged herein, DEFENDANTS have engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
16 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
17 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
18 competition, including restitution of wages wrongfully withheld.

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

25 54. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,
26 unfair and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANTS.

 55. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
2 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
3 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
4 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
5 restitution of wages wrongfully withheld.

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

9 57. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
11 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
12 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
13 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
15 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
16 restitution of wages wrongfully withheld.

17 58. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
18 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
19 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
20 each workday in which a second off-duty meal period was not timely provided for each ten (10)
21 hours of work.

22 59. PLAINTIFF further demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
24 not timely provided as required by law.

25 60. By and through the unlawful and unfair business practices described herein,
26 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
27 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
28 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law

1 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
2 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

13 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
14 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
15 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
16 engaging in any unlawful and unfair business practices in the future.

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

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SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 77. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

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

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

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

22 80. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
27 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
28 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

1 81. 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 82. Cal. Lab. Code § 510 further provides that employees in California shall not be
4 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek
5 unless they receive additional compensation beyond their regular wages in amount specified by
6 law.

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

11 84. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
14 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
17 to pay these employees the correct applicable overtime wages for all overtime worked.

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

24 86. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
26 consequently underpaid the actual time worked by PLAINTIFF and other members of the
27 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
28 payment of all earned wages, and other benefits in violation of the California Labor Code, the
Industrial Welfare Commission requirements and other applicable laws and regulations.

1 87. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
3 full compensation for all overtime worked.

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

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

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

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

27 92. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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FIFTH CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED REST PERIODS
(Cal. Lab. Code §§ 226.7 & 512)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
Defendants)**

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §2802)

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

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

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

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

105. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones and purchasing of company-mandated uniforms, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones to respond to work related issues and to wear company-mandated uniforms. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from same. These expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

1 106. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
2 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
3 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
4 at the statutory rate and costs under Cal. Lab. Code § 2802.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §226)**

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

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

13 108. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 “accurate itemized” statement in writing showing:

- 15 (1) gross wages earned,
- 16 (2) total hours worked by the employee, except for any employee whose compensation is
17 solely based on a salary and who is exempt from payment of overtime under subdivision
18 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 19 (3) the number of piecerate units earned and any applicable piece rate if the employee is
20 paid on a piece-rate basis,
- 21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
- 23 (5) net wages earned,
- 24 (6) the inclusive dates of the period for which the employee is paid,
- 25 (7) the name of the employee and his or her social security number, except that by January
26 1, 2008, only the last four digits of his or her social security number or an employee
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1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

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7 109. When DEFENDANTS did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANTS violated Cal.
9 Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage statement in writing
10 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
11 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
12 thereby also failed to set forth the correct wages earned by the employees. Additionally, the wage
13 statements DEFENDANTS issued to PLAINTIFF and other CALIFORNIA CLASS Members
14 violated Cal. Lab. Code Section 226(a) in that DEFENDANTS failed to correctly list the correct
15 name of the legal entity that was the employer of PLAINTIFF and the CALIFORNIA CLASS
16 Members.

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

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal. Lab. Code §§201, 202, 203)

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

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

112. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. 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.

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

116. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 117. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANTS has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

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

12 **NINTH CAUSE OF ACTION**

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

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

15 **(Alleged by PLAINTIFF and against all Defendants)**

16 1. Plaintiff realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

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

27 3. Plaintiff, and such persons that may be added from time to time who satisfy the
28 requirements and exhaust the administrative procedures under the Private Attorney General Act,
bring this Representative Action on behalf of the State of California with respect to themselves
and all individuals who are or previously were employed by DEFENDANT and classified as non-

1 exempt employees in California during the time period of January 14, 2018 until the present (the
2 "AGGRIEVED EMPLOYEES").

3 4. On January 14, 2019, Plaintiff gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific
5 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
6 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
7 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
8 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
9 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

11 5. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because Defendant (a) failed to properly record and pay Plaintiff and the
13 other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in
14 violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed
15 to timely pay wages, and (d) retaliated against him in violation of the California Labor Code, all
16 in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but
17 not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 350, 353, 510, 512, 558, 1194,
18 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
19 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
20 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
21 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
22 the other AGGRIEVED EMPLOYEES.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for a judgment against each Defendant, as follows:

25 1. On behalf of the CALIFORNIA CLASS:

- 26 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
28 b. An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

2 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
3 withheld from compensation due to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS; and

5 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANTS' violations due to
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

9 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
10 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
11 action pursuant to Cal. Code of Civ. Proc. § 382;

12 b. Compensatory damages, according to proof at trial, including compensatory
13 damages for minimum and overtime compensation due PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
15 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
16 statutory rate;

17 c. 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 LABOR SUB-CLASS for each violation in a subsequent pay
20 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
21 an award of costs for violation of Cal. Lab. Code § 226

22 d. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
23 CLASS as a penalty from the due date thereof at the same rate until paid or until an
24 action therefore is commenced, in accordance with Cal. Lab. Code § 203;

25 e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order; and,

27 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
28 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and

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costs of suit.

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

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

4. On all Claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and,

c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or § 1198.

DATED: April 2, 2019

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: April 2, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiff.

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EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #158501

January 14, 2019

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

B H C W, Inc.
c/o Talal Sheena
11465 Woodside Ave.
Santee CA 92071

Soapy Joe's Inc.
c/o Talal Sheena
11465 Woodside Ave.
Santee CA 92071

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 350, 351, 353, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Lori A. Phipps (“Plaintiff”), and other aggrieved employees in a lawsuit against B H C W, Inc. and Soapy Joe’s Inc. (“Defendants”). Plaintiff was employed by Defendants in California from April 2018 to October 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control, including minimum wage and overtime worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wage and overtime wages, and for all of their missed meal and rest breaks. Defendants also failed to reimburse Plaintiff and other aggrieved employees for required expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 350, 351, 353, 510, 512, 1194, 1197,

1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Lori A. Phipps

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203
4 Website: www.zakaylaw.com

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

9 Attorneys for Plaintiff

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

12
13 LORI A. PHIPPS, an individual, on behalf of
herself and on behalf of all persons similarly
14 situated,

15 Plaintiff,

16 v.

17 BHCW, INC., a Corporation (dba) SOAPY
JOE'S CAR WASH; SOAPY JOE'S INC. a
18 California Corporation, and DOES 1-50,
19 Inclusive,

20 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB CODE §2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL.LAB CODE § 226; and,
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant BHCW, INC. dba SOAPY JOE’S CAR WASH (“DEFENDANT
6 BHCW”) is a Corporation, and at all relevant times mentioned herein conducted and continues to
7 conduct substantial and regular business throughout California.

8 2. Defendant SOAPY JOE’S INC. (“DEFENDANT SOAPY JOE’S”) is a California
9 Corporation, and at all relevant times mentioned herein conducted and continues to conduct
10 substantial and regular business throughout California.

11 3. Defendant BHCW and Defendant SOAPY JOE’S were the joint employers of
12 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
13 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
14 herein and collectively referred to herein as “DEFENDANTS”.

15 4. DEFENDANTS, doing business as Soapy Joe’s Car Wash, operate multiple gas
16 stations, convenience stores and car wash facilities throughout San Diego County.

17 5. PLAINTIFF was employed by DEFENDANTS in California from April of 2018
18 to October of 2018 as a Customer Service Associate and was at all times classified by
19 DEFENDANTS as a non-exempt employee, paid on an hourly basis, and entitled to the legally
20 required meal and rest periods and payment of minimum and overtime wages due for all time
21 worked.

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

1 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees for all their time worked. DEFENDANT's
5 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
6 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
7 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
8 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
9 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
10 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
11 all other appropriate legal and equitable relief.

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

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

THE CONDUCT

1
2 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. DEFENDANTS required
6 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
7 they were under DEFENDANTS’ control. Specifically, DEFENDANTS required PLAINTIFF to
8 work while clocked out during what was supposed to be PLAINTIFF’s off-duty meal break.
9 PLAINTIFF was often interrupted by work assignments during her off-duty meal break. Indeed,
10 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
11 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
12 compensation by regularly working without their time being accurately recorded and without
13 compensation at the applicable minimum wage and overtime rates. DEFENDANTS’ uniform
14 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
15 time worked is evidence by DEFENDANTS’ business records.

16 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
17 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
19 overtime hours. As a result, DEFENDANTS were able to, and did in fact systematically,
20 unlawfully and unilaterally, alter the time recorded in DEFENDANTS’ timekeeping system for
21 PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
22 employees the applicable overtime compensation for overtime working and to avoid paying these
23 employees for missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS
24 Members forfeited time worked by regularly working without their time being accurately recorded
25 and without compensation at the applicable overtime rates.

26 12. The mutability of the timekeeping system allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS’
28 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA

1 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
2 were not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice denying employees uninterrupted thirty (30) minute
4 off-duty meal breaks each day or otherwise compensating them for missed meal breaks. As a
5 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members
6 were also from time to time unable to take thirty (30) minute off duty meal breaks and were not
7 fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
8 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
9 hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to
10 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
11 for some workdays in when these employees were required by DEFEDNANTS to work ten (10)
12 hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited
13 meal breaks without additional compensation and in accordance with DEFENDANTS' strict
14 corporate policy and practice. DEFENDANTS failed to maintain adequate staffing levels while
15 increasing the production levels for each employee at the busy car washes, they provided services
16 for.

17 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
19 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
20 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
21 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for
22 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second
23 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
24 from time to time. PLAINTIFF and other CALIFORNIA 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 CLASS Members were from time to time denied their
27 proper rest periods by DEFENDANT and DEFENDANTS' managers.

28

1 14. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
2 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for their overtime worked. DEFENDANTS unlawfully and unilaterally failed to
4 accurately calculate wages for overtime worked by PLAINTIFF and other members of the
5 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
6 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
7 forfeited wages due them for working overtime without compensation at the correct overtime
8 rates. DEFENDANTS' uniform policy and practice to not pay the members of the CALIFORNIA
9 CLASS the correct overtime rate for all overtime worked in accordance with applicable law is
10 evidenced by DEFENDANTS' business records.

11 15. DEFENDANTS, as a matter of corporate policy, practice and procedure,
12 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS
13 and the other CALIFORNIA CLASS Members for required business expenses incurred by
14 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
15 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
16 are required to indemnify employees for all expenses incurred in the course and scope of their
17 employment. Cal. Lab Code §2802 expressly states that "an employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
20 even though unlawful, unless the employee, at the time of obeying the directions, believed them
21 to be unlawful."

22 16. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
23 Members as a business expense, were required by Defendant to use their own personal cellular
24 phones, and to purchase and wear company-mandated uniforms, as a result of, and in furtherance
25 of their job duties as employees for DEFENDANTS, but were not reimbursed or indemnified by
26 DEFENDANTS. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were
27 required by DEFENDANTS to use their personal cell phones for work related issues, and to
28 purchase and wear company-mandated uniforms. As a result, in the course of their employment

1 with DEFENDANTS, PLAINTIFFS and other members of the CALIFORNIA CLASS incurred
2 unreimbursed business expenses which included but were not limited to, costs, related to the use
3 of their personal cellular phones and the purchasing of company-mandated uniforms, all on behalf
4 of and for the benefit of DEFENDANTS.

5 17. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
6 miss meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
8 to show, among other things, the correct wages paid for missed meal and rest breaks. Cal. Lab.
9 Code § 226 provides that every employer shall furnish each of his or her employees with an
10 accurate itemized wage statement in writing showing, among other things, gross wages earned
11 and all applicable hourly rates in effect during the pay period and the corresponding amount of
12 time worked at each hourly rate. Additionally, the wage statements DEFENDANTS issued to
13 PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a)
14 in that DEFENDANTS failed to correctly list the correct name of the legal entity that was the
15 employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from the violations
16 listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage
17 statement that lists all the requirements under California Labor Code 226 et seq. As a result,
18 DEFENDANTS from time to time provided PLAINTIFF and the other members of the
19 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

20 18. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
22 matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
24 missed meal and rest periods. This uniform policy and practice of DEFENDANTS is intended to
25 purposefully avoid the payment for all time worked as required by California law which allows
26 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
27 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
28 against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

1 19. By reason of this uniform conduct applicable to PLAINTIFF and all
2 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the
4 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
5 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
6 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the
7 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation
8 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
9 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
10 California Labor Code and regulations promulgated thereunder as herein alleged.

11 20. Specifically, as to PLAINTIFF, DEFENDANTS failed to provide all the legally
12 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
13 Code and failed to pay her all minimum and overtime wages due to him. The nature of the work
14 performed by the PLAINTIFF did not prevent her from being relieved of all of his duties for the
15 legally required off-duty meal periods. As a result, DEFENDANTS’ failure to provide
16 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS’ business
17 records. As a result of DEFENDANTS not accurately recording all missed meal and rest periods
18 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
19 DEFENDANTS violated California law, and in particular, Labor Code Section 226(a). To date,
20 DEFENDANTS have yet to pay PLAINTIFF all of her wages due to her and DEFENDANTS
21 have failed to pay any penalty wages owed to him under California Labor Code Section 203. The
22 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

23 21. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS’ company
24 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
25 forfeit gratuities left for them by customers to DEFENDANTS’ agents who provided no service
26 to the customers that resulted in the gratuity.

27 22. DEFENDANTS are generally in the business of managing and operating car wash
28 facilities. During the CALIFORNIA CLASS PERIOD PLAINTIFF and other CALIFORNIA

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

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

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

22 25. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
23 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
24 CLASS for all their gratuities earned while working for DEFENDANTS. DEFENDANTS
25 systematically, unlawfully and unilaterally failed to accurately calculate wages for gratuities
26 earned by the PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid
27 paying these employees the correct compensation. As a result, the PLAINTIFF and the other
28 members of the CALIFORNIA CLASS forfeited wages due them for regularly working without

1 all compensation they are earned being paid to them. DEFENDANTS’ uniform policy and
2 practice to not pay the members of the CALIFORNIA CLASS all of their gratuities owed to them
3 in accordance with applicable California state law is evidenced by DEFENDANTS’ business
4 records.

5 26. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission (“IWC” Wage Order), DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally, knowingly and systematically
8 failed to compensate the PLAINTIFF and the other members of the CALIFORNIA CLASS for
9 all of their gratuities earned while working in the “chain of service” for DEFENDANTS. This
10 uniform policy and practice of DEFEDNANTS was intended to purposefully avoid the payment
11 of the correct gratuity compensation as required by California law which allowed DEFENDANTS
12 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
13 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
14 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

15
16 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

1
2 29. 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 BHCW and/or
6 DEFENDANT SOAPY JOE'S in California and classified as non-exempt employees (the
7 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
8 of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
9 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
10 Members is under five million dollars (\$5,000,000.00).

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

14 31. DEFENDANTS, 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, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
18 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
19 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
20 permits or suffers to permit this work.

21 32. DEFENDANTS have the burden of proof to make sure that each and every
22 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
23 required by California laws. The DEFENDANTS, however, as a matter of uniform and systematic
24 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still
25 fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
26 Member is paid as required by law. This common business practice is applicable to each and every
27 CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair,
28

1 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
2 causation, damages, and reliance are not elements of this claim.

3 33. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 34. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
8 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
9 policies, practices and procedures that failed to pay all wages due the
10 CALIFORNIA CLASS for all time worked, and failed to accurately record the
11 applicable rates of all time worked by the CALIFORNIA CLASS;
- 12 b. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
14 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
15 members;
- 16 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
17 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
18 company policies, practices and procedures that uniformly and systematically
19 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
20 CLASS for all time worked, including minimum wages owed and overtime wages
21 owed for work performed by these employees; and
- 22 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
23 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
24 company policies, practices and procedures that uniformly and systematically
25 forced PLAINTIFF and other members of the CALIFORNIA CLASS to forfeit
26 gratuities as described herein.

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

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

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

9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
11 the CALIFORNIA CLASS, was subjected to the uniform employment practices
12 of DEFENDANTS and was a non-exempt employee paid on an hourly basis and
13 paid additional non-discretionary incentive wages who was subjected to the
14 DEFENDANTS' practice and policy which failed to pay the correct rate of
15 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
16 CALIFORNIA CLASS and thereby systematically under pays overtime
17 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
18 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and

22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who are
24 competent and experienced in Class Action litigation. There are no material
25 conflicts between the claims of the representative PLAINTIFF and the members
26 of the CALIFORNIA CLASS that would make class certification inappropriate.
27 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
28 CALIFORNIA CLASS Members.

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

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

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

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

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

20 i. With respect to the First Cause of Action, the final relief on behalf of the
21 CALIFORNIA CLASS sought does not relate exclusively to restitution
22 because through this claim PLAINTIFF seek declaratory relief holding that
23 the DEFENDANTS' policy and practices constitute unfair competition,
24 along with declaratory relief, injunctive relief, and incidental equitable
25 relief as may be necessary to prevent and remedy the conduct declared to
26 constitute unfair competition;

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other available
3 methods for the fair and efficient adjudication of the controversy, including
4 consideration of:

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

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

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

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

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

27 iv. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will obviate

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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 DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual 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 DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA CLASS.

10 38. DEFENDANTS maintain records from which the Court can ascertain and identify
11 by job title each of DEFENDANTS' employees who as have been systematically, intentionally
12 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
14 of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
17 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
18 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
19 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
20 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
21 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
22 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 40. DEFENDANTS, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANTS failed to correctly calculate
28 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA

1 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work, required
2 employees to perform this work and permitted or suffered to permit this overtime work.
3 DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
4 wages which these employees are entitled in order to unfairly cheat the competition and
5 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS
7 PERIOD should be adjusted accordingly.

8 41. DEFENDANTS maintain records from which the Court can ascertain and identify
9 by name and job title, each of DEFENDANTS' employees who have been systematically,
10 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
11 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any
12 additional job titles of similarly situated employees when they have been identified.

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

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

- 17 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
- 21 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 overtime compensation for overtime worked under the overtime pay requirements
23 of California law;
- 24 c. Whether DEFENDANTS failed to accurately record the applicable overtime rates
25 for all overtime worked PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS;

- 1 d. Whether DEFENDANTS failed to accurately record the applicable minimum
- 2 wage for all time worked PLAINTIFF and the other members of the
- 3 CALIFORNIA LABOR SUB-CLASS;
- 4 e. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
- 5 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 6 thirty (30) minute meal breaks and rest periods;
- 7 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 8 conduct;
- 9 g. The proper measure of damages and penalties owed to the members of the
- 10 CALIFORNIA LABOR SUB-CLASS; and
- 11 h. Whether DEFENDANTS' conduct was willful.

12 44. DEFENDANTS, as a matter of company policy, practice and procedure, failed to
13 properly compensate the CALIFORNIA LABOR SUB-CLASS Members. All of the
14 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt
15 employees who were paid on an hourly basis by DEFENDANTS according to uniform and
16 systematic company procedures as alleged herein above. This business practice was uniformly
17 applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore,
18 the propriety of this conduct can be adjudicated on a class-wide basis.

19 45. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
- 22 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
- 23 pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194 & §
- 24 1198;
- 25 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 26 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 27 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 28 Cal. Lab. Code §§ 1194 and 1197;

- 1 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
2 the other members of the CALIFORNIA CLASS with all legally required off-duty,
3 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 4 d. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment.

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

- 12 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
14 is impracticable and the disposition of their claims as a class will benefit the parties
15 and the Court;
- 16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
18 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
19 CLASS;
- 20 c. The claims of the representative PLAINTIFF are typical of the claims of each
21 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
23 employee paid on an hourly basis and paid additional non-discretionary incentive
24 wages who was subjected to the DEFENDANTSs practice and policy which failed
25 to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-
26 CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result
27 of DEFENDANTS’ employment practices. PLAINTIFF and the members of the
28 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANTS; and

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

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

- 13 a. Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
16 the risk of:
- 17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA LABOR SUB-CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA LABOR SUB-CLASS; or
 - 21 ii. Adjudication with respect to individual members of the CALIFORNIA
22 LABOR SUB-CLASS which would as a practical matter be dispositive of
23 interests of the other members not party to the adjudication or substantially
24 impair or impede their ability to protect their interests.
- 25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR
27 SUB-CLASS, making appropriate class-wide relief with respect to the
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS

1 uniformly failed to pay all wages due, including the correct overtime rate, for all
2 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
3 required by law;

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

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

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

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

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

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

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

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

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

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

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

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

19
20 **FIRST CAUSE OF ACTION**

21 **UNLAWFUL BUSINESS PRACTICES**

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

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

24 49. 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 50. DEFENDANTS are a "person" as that term is defined under Cal. Bus. And Prof.
28 Code § 17021.

1 51. 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 competition
4 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
9 defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 52. By the conduct alleged herein, DEFENDANTS have engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
16 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
17 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
18 competition, including restitution of wages wrongfully withheld.

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

25 54. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,
26 unfair and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANTS.

 55. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
2 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
3 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
4 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
5 restitution of wages wrongfully withheld.

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

9 57. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
11 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
12 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
13 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
15 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
16 restitution of wages wrongfully withheld.

17 58. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
18 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
19 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
20 each workday in which a second off-duty meal period was not timely provided for each ten (10)
21 hours of work.

22 59. PLAINTIFF further demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
24 not timely provided as required by law.

25 60. By and through the unlawful and unfair business practices described herein,
26 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
27 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
28 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law

1 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
2 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

13 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
14 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
15 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
16 engaging in any unlawful and unfair business practices in the future.

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

24 **SECOND CAUSE OF ACTION**

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

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

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

4 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
5 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
6 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
7 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

10 68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a wage less than
12 the minimum so fixed is unlawful.

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

15 70. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
16 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
17 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was
18 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS.

20 71. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
21 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
22 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
23 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
24 pay.

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

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

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

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

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

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

27 78. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
by the California Labor Code and/or other applicable statutes. To the extent minimum wage

1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
2 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
3 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
4 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
5 SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
6 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
7 are entitled to seek and recover statutory costs.

8
9 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

1 83. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
2 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
3 Code § 1198 further states that the employment of an employee for longer hours than those fixed
4 by the Industrial Welfare Commission is unlawful.

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

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

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

24 87. As a direct result of DEFENDANTS’ unlawful wage practices as alleged herein,
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
26 full compensation for all overtime worked.

27 88. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
28 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective

1 bargaining agreement that would preclude the causes of action contained herein this Complaint.
2 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
3 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
4 the State of California.

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

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

16
17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

16 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

17 **(Cal. Lab. Code §2802)**

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

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

23 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

1 108. Cal. Labor Code § 226 provides that an employer must furnish employees with an
2 “accurate itemized” statement in writing showing:

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

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22 109. When DEFENDANTS did not accurately record PLAINTIFF’s and other
23 CALIFORNIA CLASS Members’ missed meal and rest breaks, DEFENDANTS violated Cal.
24 Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage statement in writing
25 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
26 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
27 thereby also failed to set forth the correct wages earned by the employees. Additionally, the wage
28 statements DEFENDANTS issued to PLAINTIFF and other CALIFORNIA CLASS Members

1 violated Cal. Lab. Code Section 226(a) in that DEFENDANTS failed to correctly list the correct
2 name of the legal entity that was the employer of PLAINTIFF and the CALIFORNIA CLASS
3 Members.

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

15
16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

24 2. Cal. Lab. Code § 200 provides that:

25 As used in this article:(a) "Wages" includes all amounts for labor performed by
26 employees of every description, whether the amount is fixed or ascertained by the
27 standard of time, task, piece, Commission basis, or other method of calculation. (b)
28 "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

4 4. 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
8 intention to quit, in which case the employee is entitled to his or her wages at the
9 time of quitting. Notwithstanding any other provision of law, an employee who
10 quits without providing a 72-hour notice shall be entitled to receive payment by
11 mail if he or she so requests and designates a mailing address. The date of the
12 mailing shall constitute the date of payment for purposes of the requirement to
13 provide payment within 72 hours of the notice of quitting.

14 5. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 6. Cal. Lab. Code § 203 provides:

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

22 7. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members terminated and DEFENDANTS has not tendered payment of overtime wages, to these
24 employees who actually worked overtime, as required by law.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against each Defendant, as follows:

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

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - d. 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;

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- e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,
 - f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.
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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or § 1198.

DATED: January ____, 2019

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: January ____, 2019

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff