

SUMMONS (CITACION JUDICIAL)

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

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

HEALTHCARE INVESTMENTS, INC. (dba Rosecrans Care Center), a California Corporation; and DOES 1-50, Inclusive,

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

LUIS A. RENDON, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of Los Angeles, Stanley Mosk
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): 20STCV39775

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 10/15/2020
(Fecha) Clerk, by Sherri R. Carter Executive Officer / Clerk of Court, Deputy D. Williams (Adjunto) (Secretario)

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

NOTICE TO THE PERSON SERVED: You are served

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



Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Linfield

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ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

LUIS A. RENDON, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HEALTHCARE INVESTMENTS, INC. (dba
Rosecrans Care Center), a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. **20STCV39775**

COMPLAINT FOR:

**1. VIOLATIONS OF THE CALIFORNIA
PRIVATE ATTORNEY GENERAL
ACT AT LABOR CODE §§ 2698 ET
SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff LUIS A. RENDON (“PLAINTIFF”) in his representative capacity on behalf of the State
2 of California and fellow Aggrieved Employees alleges based on information and belief, except for her
3 own acts and knowledge which are based on personal knowledge, the following:

4 **INTRODUCTION**

5 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
6 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
7 aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour
8 violations under the California Labor Code.

9 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
10 their employment-related costs by systematically violating California wage and hour laws.

11 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
12 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 13 a. Failure to provide compliant meal and rest periods;
- 14 b. Failure to pay all minimum, regular and overtime wages;
- 15 c. Failure to maintain true and accurate records;
- 16 d. Failure to provide accurate itemized wage statements;
- 17 e. Failure to timely pay wages due during, and upon termination of employment;
- 18 and

19 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of the
20 State of California and aggrieved employees of DEFENDANTS in California seeking all civil penalties
21 permitted pursuant to California Labor Code § 2699, *et seq.*

22 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
23 California.

24 6. PLAINTIFF does not seek to recover anything other than penalties as permitted by
25 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations,
26 PLAINTIFF does not seek underlying general and/or special damages for those violations in this action,
27 but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
28



1 PLAINTIFF is not abandoning his right to pursue their individual claims for, *inter alia*, Defendants’
2 alleged wage violations, and/or general or special damages arising from those violations, and he fully
3 intends to, at a future date, pursue claims for those individual claims and damages.

4 **THE PARTIES**

5 7. Defendant HEALTHCARE INVESTMENTS, INC. (“Defendant” or “DEFENDANT”)
6 is a California Corporation and at all relevant times mentioned herein conducted and continues to
7 conduct substantial and regular business in California.

8 8. DEFENDANT, sometimes doing business as “Rosecrans Care Center,” operates a
9 convalescent hospital in the City of Gardena, County of Los Angeles.

10 9. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee
11 entitled to minimum wages, overtime pay and meal and rest periods from 2015 to June 2019.
12 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
13 employee paid in whole or in part on an hourly basis.

14 10. PLAINTIFF brings this action in hi representative capacity on behalf of the State of
15 California and on behalf of all of DEFENDANTS’ current and former non-exempt employees employed
16 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
17 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between April 6,
18 2019 and the present (“PAGA PERIOD”).

19 11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
20 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged Labor
21 Code violations committed by DEFENDANTS.

22 12. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
23 employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the
24 applicable Industrial Welfare Commission Wage Order.

25 13. Each of the fictitiously named defendants participated in the acts alleged in this
26 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
27 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
28 the true names and capacities of these fictitiously named defendants when their true names are



1 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
2 defendants have participated in the acts alleged in this Complaint.

3 14. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
4 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
5 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a
6 section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of
7 work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for
8 each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

14 **JOINT EMPLOYER**

15 16. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
16 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

17 17. Section 558 of the California Labor Code provides that “any employer *or other person*
18 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
20 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

21 18. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
22 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
23 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
24 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

25 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
26 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
27 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
28 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*



1 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
2 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

3 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
4 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
5 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
6 damages alleged herein.

7 21. At all relevant times, each Defendant, whether named or fictitious, was the agent,
8 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
9 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of
10 the other.

11 22. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
12 wages, working hours, and/or working conditions.

13 23. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
14 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the
15 acts of each Defendant are legally attributable to the other DEFENDANTS.

16 **JURISDICTION AND VENUE**

17 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties
19 under the Private Attorney General Act of 2004, California Labor Code §2698 *et seq.*

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

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1 **THE CONDUCT**

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

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

25 28. The mutability of the timekeeping system also allowed DEFENDANT to alter employee
26 time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’s timekeeping
27 system so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked
28 out for a thirty (30) minute meal break when in fact the employees were not at all times provided an



1 off-duty meal break. This practice is a direct result of DEFENDANT's uniform policy and practice of
2 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
3 compensate them for missed meal breaks

4 29. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not fully
6 relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required
7 to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
9 AGGRIEVED EMPLOYEES with a second off-duty meal period each workday in which these
10 employees were required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in
12 accordance with DEFENDANTS' strict corporate policy and practice

13 30. During the PAGA PERIOD, from time to time, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten (10)
15 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
16 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
17 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
18 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour wages in
20 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were periodically denied their proper rest periods by DEFENDANTS and
22 DEFENDANT'S managers.

23 31. When PLAINTIFF and other AGGRIEVED EMPLOYEES were not paid all wages
24 owed to them, and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
26 to show, among other things, the time worked, including, work performed in excess of eight (8) hours
27 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed
28 meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or



1 her employees with an accurate itemized wage statement in writing showing, among other things, gross
2 wages earned and all applicable hourly rates in effect during the pay period and the corresponding
3 amount of time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
4 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
5 under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal.
7 Lab. Code § 226.

8 32. Specifically as to PLAINTIFF'S pay, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was
10 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
11 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second
12 off-duty meal period each workday in which he was required by DEFENDANT to work ten (10) hours
13 of work. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
14 accordance with DEFENDANT'S strict corporate policy and practice. To date, DEFENDANT has not
15 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages owed to them
16 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
17 the sum or value of \$75,000.

18 **FIRST CAUSE OF ACTION**

19 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

20 **[Cal. Lab. Code §§ 2698, et seq.]**

21 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

22 33. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
23 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

5 35. PLAINTIFF brings this Representative Action on behalf of the State of California with
6 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
7 DEFENDANTS during the PAGA PERIOD.

8 36. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
9 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of Labor
10 Code Section 2699(c).

11 37. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
12 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
13 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

14 38. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
15 Section 2699.3. By certified letter, return receipt requested, dated May 1, 2020, PLAINTIFF gave
16 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
17 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
18 to support the alleged violations. See Exhibit #1, attached hereto and incorporated by this reference
19 herein.

20 39. More than sixty-five (65) days have passed since serving the LWDA with notice of
21 DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to
22 investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A).
23 Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is
24 authorized to pursue this cause of action.

25 40. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
26 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor
27 Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d),
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1 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, California Code of Regulations,
2 Title 8, Section 1 1070(14) (Failure to Provide Seating) in the following amounts:

3 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
4 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
5 for the initial violation and two hundred dollars (\$200) for AGGIEVED
6 EMPLOYEE per pay period for each subsequent violation [penalty per
7 Labor Code Section 2699(f)(2)];

8 b. For violations of Labor Code Section 226(a), a civil penalty in the
9 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
10 EMPLOYEE for any initial violation and one thousand dollars for each
11 subsequent violation [penalty per Labor Code Section 226.3];

12 c. For violations of Labor Code Sections 204, a civil penalty in the
13 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
14 for any initial violation and two hundred dollars (\$200) for AGGIEVED
15 EMPLOYEE for each subsequent violation [penalty per Labor Code
16 Section 210];

17 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
18 penalty in the amount of fifty dollars (\$50) for each underpaid
19 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
20 (\$100) for each underpaid AGGIEVED EMPLOYEE for each subsequent
21 violation [penalty per Labor Code Section 558];

22 e. For violations of Labor Code Section 2269(a), a civil penalty in the
23 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
24 per violation in an initial citation and one thousand dollars (\$1,000) per
25 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
26 Labor Code Section 226.3];

27 f. For violations of Labor Code Section 1174(d), a civil penalty in the
28 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE



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[penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

h. For violations of Labor Code Section 2802 a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

41. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney’s fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

42. Some or all of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including

1 pursuant to Labor Code § 2699, *et seq.*;

2 (b) For civil penalties to the extent permitted bylaw pursuant to the Labor Code under the
3 Private Attorneys General Act; and

4 (c) For such other relief as the Court deems just and proper.

5
6 Dated: October 12 2020

Respectfully Submitted,
ZAKAY LAW GROUP, APC

7
8 By: 
9 Shani O. Zakay
10 Attorney for PLAINTIFF

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12 **DEMAND FOR JURY TRIAL**

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

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16 Dated: October 12, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, APC

17
18 By: 
19 Shani O. Zakay
20 Attorney for PLAINTIFF

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EXHIBIT 1





ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

May 1, 2020

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

Via Online Submission

HEALTHCARE INVESTMENTS, INC

c/o CIPRIANO BAUTISTA
1810 F. FAIR OAKS AVE
PASADENA CA 91103

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, California Code or regulations, Title 8 Section 1 1070(14) (Failure to Provide Seating) and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents Luis A. Rendon (“Plaintiff”) and other aggrieved employees in an action against HEALTHCARE INVESTMENTS, INC. (dba Rosecrans Care Center), (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from 2015 to June 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, and with minimum and overtime wages for all time worked.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

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

Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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

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

Respectfully,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney at Law

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES

11
12 LUIS A. RENDON, an individual, on behalf of
himself and on behalf of all persons similarly
13 situated,

14 Plaintiff,

15 v.

16 HEALTHCARE INVESTMENTS, INC. (dba
Rosecrans Care Center), a California
17 Corporation; and DOES 1-50, Inclusive,

18 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant HEALTHCARE INVESTMENTS, INC. (“Defendant” or
7 “DEFENDANT”) is a California Corporation and at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business in California.

9 2. DEFENDANT, sometimes doing business as “Rosecrans Care Center,” operates
10 a convalescent hospital in the City of Gardena, County of Los Angeles.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from 2015 to
13 June 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
14 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANTS in the form of non-discretionary incentive wages.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously were employed by Defendant in California and
18 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between April
19 6, 2016 and on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).
20 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
21 five million dollars (\$5,000,000.00).

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

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

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

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

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time to time,
26 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
27 paying them for all the time they were under DEFENDANT'S control. Specifically,
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended.
2 PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were
3 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF
4 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and
5 overtime compensation by working without their time being accurately recorded and without
6 compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform
7 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
8 time worked is evidenced by DEFENDANT'S business records.

9 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
10 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for the actual time these employees worked each day,
12 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
13 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and
14 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
15 applicable overtime compensation for overtime worked and to avoid paying these employees for
16 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
17 time to time, forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable overtime rates.

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

26 11. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period each workday in which these employees were required by
5 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
6 CLASS Members therefore forfeited meal breaks without additional compensation and in
7 accordance with DEFENDANTS' strict corporate policy and practice

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

19 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
20 wages owed to them, and/or missed meal and rest breaks, DEFENDANT also failed to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
22 wage statements which failed to show, among other things, the time worked, including, work
23 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
24 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate
26 itemized wage statement in writing showing, among other things, gross wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28 worked at each hourly rate. Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.*,. As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 wage statements which violated Cal. Lab. Code § 226.

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

16 15. Specifically as to PLAINTIFF’S pay, PLAINTIFF was from time to time unable
17 to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which he was
21 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
22 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
23 corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the
24 overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab.
25 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
26 or value of \$75,000.

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1 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

17 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 for time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even
22 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
23 work and permitted or suffered to permit this overtime work.

24 23. DEFENDANT have the legal burden to establish that each and every
25 CALIFORNIA CLASS Member is paid for all time worked. DEFENDANT, however, as a
26 matter of uniform and systematic policy and procedure failed to have in place during the
27 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
28 that each and every CALIFORNIA CLASS Member is paid for all time worked, so as to satisfy

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

5 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
6 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
7 employee for all time worked at the applicable rate, as required by California Labor Code §§
8 204 and 510, *et seq.*

9 25. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
10 CLASS Members is impracticable.

11 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
12 California law by:

- 13 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
14 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
15 company policies, practices and procedures that failed to pay all wages due the
16 CALIFORNIA CLASS for all minimum wages and overtime worked.
- 17 b. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
19 provide mandatory meal and/or rest breaks to PLAINTIFF and the
20 CALIFORNIA CLASS members;

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

- 23 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as
25 a class will benefit the parties and the Court;
- 26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA CLASS will apply
28 uniformly to every member of the CALIFORNIA CLASS;

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

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

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

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

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

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

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

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

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

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to

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recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

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

10 **THE CALIFORNIA LABOR SUB-CLASS**

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

19 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
20 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
21 requirements, and the applicable provisions of California law, intentionally, knowingly, and
22 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time
23 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
24 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
25 this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly
26 denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages at
27 the correct amount to which these employees are entitled in order to unfairly cheat the
28 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the

1 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
2 SUB-CLASS PERIOD should be adjusted accordingly.

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

9 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
10 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 13 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
14 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
15 violation of the California Labor Code and California regulations and the
16 applicable California Wage Order;
- 17 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
18 to overtime compensation for overtime worked under the overtime pay
19 requirements of California law;
- 20 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
22 thirty (30) minute meal breaks and rest periods;
- 23 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
25 statements;
- 26 e. Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct;

- 1 f. The proper measure of damages and penalties owed to the members of the
- 2 CALIFORNIA LABOR SUB-CLASS; and
- 3 g. Whether DEFENDANT's conduct was willful.

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

12 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
13 under California law by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
10 engage in a business practice which violates California law, including but not limited to, the
11 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
12 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198,
13 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
14 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
15 unfair competition, including restitution of wages wrongfully withheld.

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

22 46. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
25 worked, and failed to provide the required amount of overtime compensation, pursuant to the
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
28

1 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
2 withheld.

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

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

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

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

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

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

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

22 56. 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
24 of this Complaint.

25 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
27 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
28 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
Members.

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

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

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

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

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

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

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

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

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

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

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

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

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
2 CLASS Members are entitled to seek and recover statutory costs.

3 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

27 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
DEFENDANT and were not paid for all the time they worked, including overtime work.

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

8 77. In committing these violations of the California Labor Code, DEFENDANT acted
9 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
10 the California Labor Code, the Industrial Welfare Commission requirements and other
11 applicable laws and regulations.

12 78. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
13 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
14 receive full compensation for all overtime worked.

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

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

26 81. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
28 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed

1 to accurately record and pay using the applicable overtime rate as evidenced by
2 DEFENDANT's business records and witnessed by employees.

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

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

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

24 85. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
26 interest, statutory costs, as well as the assessment of any statutory penalties against
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
28 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be

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

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

25 88. DEFENDANT further violated California Labor Code §§ 226.7 and the
26 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
27 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
28

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

6 **(Cal. Lab. Code § 226)**

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

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

12 95. Cal. Labor Code § 226 provides that an employer must furnish employees withan
13 “accurate itemized” statement in writing showing:

- 14 a. Gross wages earned;
- 15 b. Total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment of
17 overtime under subdivision (a) of Section 515 or any applicable order of the
18 Industrial Welfare Commission;
- 19 c. The number of piece rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis;
- 21 d. All deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item;
- 23 e. Net wages earned;
- 24 f. The inclusive dates of the period for which the employee is paid;
- 25 g. The name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number or
27 an employee identification number other than a social security number may be
28 shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and

1 i. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 96. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
4 wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements which failed to show, among other things, the correct time worked, including,
7 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
8 workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code §
9 226 provides that every employer shall furnish each of his or her employees with an accurate
10 itemized wage statement in writing showing, among other things, gross wages earned and all
11 applicable hourly rates in effect during the pay period and the corresponding amount of time
12 worked at each hourly rate. Aside from the violations listed above in this paragraph,
13 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
14 requirements under California Labor Code 226 *et seq.* As a result, from time to time
15 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
16 wage statements which violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

9 99. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

103. 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

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

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

6 105. 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 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
28 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action

1 pursuant to Cal. Code of Civ. Proc. § 382;

- 2 b. Compensatory damages, according to proof at trial, including compensatory
3 damages for minimum wages and overtime compensation due PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
5 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
6 the statutory rate;
- 7 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
8 the applicable IWC Wage Order;
- 9 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
10 which a violation occurs and one hundred dollars (\$100) per member of the
11 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226; and
- 14 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
15 CLASS as a penalty from the due date thereof at the same rate until paid or until
16 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

17 3. On all claims:

- 18 a. An award of interest, including prejudgment interest at the legal rate;
- 19 b. Such other and further relief as the Court deems just and equitable; and
- 20 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
22 and/or §2802.

23 DATED: April ___ 2020

24
25 **ZAKAY LAW GROUP, APLC**

26
27 By: _____
28 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 __, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff