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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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

4 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
Norman B. Blumenthal (State Bar #068687)
5 Kyle R. Norderhaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
6 2255 Calle Clara
La Jolla, California 92037
7 Telephone: (858) 551-1223
Facsimile: (858) 551-1232

8
9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO**

12 AMBER PRICE an individual, on behalf of
13 herself, and on behalf of all persons similarly
situated,

14 Plaintiff,

15 vs.

16
17 DMSD RESTURANTS INC., a California
18 Corporation; and DOES 1 through 50,
Inclusive,

19 Defendants.
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Case No: 37-2019-00024062-CU-OE-CTL

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 AMBER PRICE, an individual, (“PLAINTIFF”), on behalf of herself and
2 all other similarly situated current and former employees, allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant DMSD RESTURANTS INC. (“DEFENDANT”) is a corporation that
6 at all relevant times mentioned herein conducted and continues to conduct substantial business in
7 the state of California.

8 2. DEFENDANT owns and operates multiple restaurants across California.

9 3. PLAINTIFF was employed by DEFENDANT from March of 2015 to December
10 of 2018 as a Cashier and was at all times classified by DEFENDANT as a non-exempt employee,
11 paid on a n hourly basis, and entitled to the legally required meal and rest periods and payment of
12 minimum and overtime wages due for all time worked.

13 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California
15 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
16 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
18 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
19 (\$5,000,000.00).

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

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

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

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

THE CONDUCT

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21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
25 and CALIFORNIA CLASS Members to work without paying them for all the time they were
26 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
27 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
28 was often interrupted by work assignments. Indeed there were many days where PLAINTIFF did

1 not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
2 Members forfeited minimum wage and overtime compensation by regularly working without their
3 time being accurately recorded and without compensation at the applicable minimum wage and
4 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
5 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
6 records .

7 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
8 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
9 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
10 overtime hours. DEFENDANT consistently required PLAINTIFF and CALIFORNIA CLASS
11 Members to work off the clock without paying them for all the time they were under
12 DEFENDANT'S control performing post-shift duties, specifically by failing to provide enough
13 labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and
14 CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. DEFENDANT
15 allocated a certain number of labor hours to each restaurant. However, DEFENDANT
16 consistently did not allocate enough labor hours such that there was not enough time for
17 PLAINTIFF and CALIFORNIA CLASS Members to complete their required duties
18 within the allocated labor hours. As a result, DEFENDANT was able to and did in fact
19 systematically, unlawfully, and unilaterally alter the time recorded in DEFENDANT's
20 timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in
21 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,
23 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
24 regularly working without their time being accurately recorded and without compensation
25 at the applicable overtime rates.

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

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

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

26 12. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
27 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
28 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed

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

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

22 14. By reason of this uniform conduct applicable to PLAINTIFF and all
23 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
26 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
27 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the
28 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation

1 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
2 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
3 California Labor Code and regulations promulgated thereunder as herein alleged.

4 15. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required
5 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and
6 failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy
7 or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
8 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by
9 the PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required
10 off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
11 required meal periods is evidenced by DEFENDANT's business records. DEFENDANT also
12 consistently required PLAINTIFF to work off the clock without paying her for all the time she was
13 under DEFENDANT'S control performing post-shift duties, specifically by failing to provide
14 enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF to
15 complete on a daily and/or weekly basis. PLAINTIFF would clock out of DEFENDANT'S
16 timekeeping system, but perform additional work for DEFENDANT in order to meet
17 DEFENDANT'S job requirements as ordered by DEFENDANT. As a result, PLAINTIFF forfeited
18 hours worked by regularly working without her time being accurately recorded and without
19 compensation at the applicable overtime rates. As a result of DEFENDANT not accurately
20 recording all missed meal and rest periods and/or minimum and overtime wages due, the wage
21 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor
22 Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to
23 her and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
24 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed the
25 sum or value of \$75,000.

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1 **JURISDICTION AND VENUE**

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

6 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
8 maintained offices and facilities in this County and/or conducts substantial business in this
9 County, and (ii) committed the wrongful conduct herein alleged in this County against members
10 of the CALIFORNIA CLASS.

11 **THE CALIFORNIA CLASS**

12 18. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
13 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
14 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
15 individuals who are or previously were employed by DEFENDANT in California and classified
16 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
17 four (4) years prior to the filing of the original complaint and ending on the date as determined by
18 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
19 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

20 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
21 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
22 accordingly.

23 20. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
27 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of
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1 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
2 employees to perform this work and permitted or suffered to permit this work.

3 21. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
4 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
5 laws. DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed
6 to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
7 or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by
8 law, so as to satisfy their burden. This common business practice applicable to each and every
9 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
10 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
11 causation, damages, and reliance are not elements of this claim.

12 22. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
15 California law by:

- 16 a. Committing an act of unfair competition in violation of the Cal. Bus. & Prof. Code
17 §§ 17200, *et seq.* (the “UCL”), by unlawfully, unfairly and/or deceptively having
18 in place company policies, practices and procedures that uniformly and
19 systematically failed to record and pay PLAINTIFF and other member of the
20 CALIFORNIA CLASS for all time worked, including minimum wages owed and
21 overtime wages owed for work performed by these employees; and,
- 22 b. Committing an act of unfair competition in violation of the UCL, by failing to
23 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
24 with the legally required meal and rest periods.

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

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- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’s deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible 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 DEFENDANT uniformly failed to pay all wages due 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

1 methods for the fair and efficient adjudication of the controversy, including
2 consideration of:

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

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

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

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

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

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

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

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

- 1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
- 2 business records of DEFENDANT; and
- 3 i. Class treatment provides manageable judicial treatment calculated to bring an
- 4 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 5 arising out of the conduct of DEFENDANT as to the members of the
- 6 CALIFORNIA CLASS.

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

20 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation
24 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to
26 perform this work and permitted or suffered to permit this overtime work. DEFENDANT have
27 uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these
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1 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
2 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
3 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

5 30. DEFENDANT maintain records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANT's employees who 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 any
9 additional job titles of similarly situated employees when they have been identified.

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

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

- 14 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
15 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
16 missed meal and rest breaks in violation of the California Labor Code and
17 California regulations and the applicable California Wage Order;
- 18 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
19 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
20 statements;
- 21 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
22 conduct;
- 23 d. The proper measure of damages and penalties owed to the members of the
24 CALIFORNIA LABOR SUB-CLASS; and,
- 25 e. Whether DEFENDANT's conduct was willful.

26 33. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
27 under California law by:
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- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code § 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks; and,
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT’s practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

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

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

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

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

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

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

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of

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

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

3 **FIRST CAUSE OF ACTION**

4 **FOR UNLAWFUL BUSINESS PRACTICES**

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

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against All Defendants)**

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

10 38. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

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

23 40. By the conduct alleged herein, DEFENDANT have engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this
27 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
28 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
29 competition, including restitution of wages wrongfully withheld.

30 41. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
31 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous

1 or substantially injurious to employees, and were without valid justification or utility for which
2 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
3 Business & Professions Code, including restitution of wages wrongfully withheld.

4 42. By the conduct alleged herein, DEFENDANT's practices were deceptive and
5 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
6 other members of the CALIFORNIA CLASS wages due pursuant to the applicable Cal. Lab.
7 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200,
8 *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
9 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

14 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
15 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
16 provide all legally required meal breaks to PLAINTIFF and the other members of the
17 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

23 46. PLAINTIFF further demands on behalf of herself and each member of the
24 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
25 paid rest period was not timely provided as required by law.

26 47. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or the consequences to them, and with the despicable intent of depriving them of their property
2 and legal rights, and otherwise causing them injury in order to increase company profits at the
3 expense of these employees.

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

15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

14 72. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
15 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
16 of implementing a uniform policy and practice that failed to accurately record overtime worked
17 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and denied
18 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
19 SUB-CLASS for overtime worked, including, the work performed in excess of eight (8) hours in
20 a workday and/or forty (40) hours in any workweek.

21 73. In committing these violations of the California Labor Code, DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

25 74. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
27 full compensation for all overtime worked.

28 75. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
3 bargaining agreement that would preclude the causes of action contained herein this Complaint.
4 Rather, PLAINTIFF bring this Action on behalf of herself and the CALIFORNIA LABOR SUB-
5 CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by
6 the State of California.

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

21 **FOR FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

28 83. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR

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

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

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

20 **FIFTH CAUSE OF ACTION**

21 **FOR FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

28 87. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
required to work in excess of four (4) hours without being provided ten (10) minute rest periods.

1 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
2 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
3 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
4 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
5 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
6 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
7 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
8 rest periods by DEFENDANT and DEFENDANT’s managers.

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

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

17 **SIXTH CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
19 **(Cal. Lab. Code § 226)**

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

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

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

- 27 a. Gross wages earned;
- 28 b. Total hours worked by the employee, except for any employee whose
compensation is solely based on a salary and who is exempt from payment of

1 overtime under subdivision (a) of Section 515 or any applicable order of the
2 Industrial Welfare Commission;

- 3 c. The number of piece rate units earned and any applicable piece rate if the employee
4 is paid on a piece-rate basis;
- 5 d. All deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item;
- 7 e. Net wages earned;
- 8 f. The inclusive dates of the period for which the employee is paid;
- 9 g. The name of the employee and his or her social security number, except that by
10 January 1, 2008, only the last four digits of his or her social security number or an
11 employee identification number other than a social security number may be shown
12 on the itemized statement;
- 13 h. The name and address of the legal entity that is the employer; and
- 14 i. All applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.

16 92. When DEFENDANT did not accurately record PLAINTIFF's and other
17 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal. Lab.
18 Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that
19 properly and accurately itemizes all missed meal and rest periods and reporting time wages owed
20 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby
21 also failed to set forth the correct wages earned by the employees. Additionally, the wage
22 statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS Members
23 violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list the correct
24 name of the legal entity that was the employer of PLAINTIFF and the CALIFORNIA CLASS
25 Members.

26 93. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
27 § 226, causing injury and damages to the PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

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

9 **SEVENTH CAUSE OF ACTION**

10 **FOR FAILURE TO PAY WAGES WHEN DUE**

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

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

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

17 95. Cal. Lab. Code § 200 provides that:

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

24 96. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable
26 immediately."

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

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

1 time of quitting. Notwithstanding any other provision of law, an employee who
2 quits without providing a 72-hour notice shall be entitled to receive payment by
3 mail if he or she so requests and designates a mailing address. The date of the
4 mailing shall constitute the date of payment for purposes of the requirement to
5 provide payment within 72 hours of the notice of quitting.

6 98. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
7 CLASS Members' employment contract.

8 99. Cal. Lab. Code § 203 provides:

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

14 100. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
15 Members terminated and DEFENDANT have not tendered payment of wages, to these employees
16 who missed meal and rest breaks, as required by law.

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF pray for a judgment against each Defendants, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
28 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
withheld from compensation due to PLAINTIFF and the other members of the

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CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT’s violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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

c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

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

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3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and,
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law including, but not limited to, pursuant to Labor Code §218.5, §226 and/or §1198.

DATED: May 9, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: May 9, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs