

**SUMMONS  
(CITACION JUDICIAL)**

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

DIAB LEASING, INC., a California Corporation; and DOES 1-50,  
Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DAVID EZELL, an individual, on behalf of himself and on behalf of all  
persons similarly situated

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

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**08/05/2021**  
**Istewart 1**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2021-00305329**

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of Sacramento  
720 9th Street  
Sacramento, CA 95814

CASE NUMBER:  
(Número del Caso):

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 C204, San Diego, CA 92110.

**L. STEWART**

DATE:

(Fecha)

**AUG 05 2021**

Clerk, by \_\_\_\_\_

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**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):

VIA FAX

1 **JCL LAW FIRM, APC**

2 Jean-Claude Lapuyade (State Bar #248676)  
3 Eduardo Garcia (State Bar #290572)  
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12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SACRAMENTO**

16 DAVID EZELL, an individual, on behalf of  
17 himself and on behalf of all persons similarly  
18 situated,

18 Plaintiffs,

19 v.

20 DIAB LEASING, INC., a California  
21 Corporation; and DOES 1-50, Inclusive,

22 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;

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**07/30/2021**  
**lstewart1**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2021-00305329**

VIA FAX

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- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
  - 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
  - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
  - 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

9 Plaintiff David Ezell, an individual, (“PLAINTIFF” and/or “PLAINTIFFS”), on behalf of  
10 himself and all other similarly situated current and former employees, alleges on information  
11 and belief, except for his own acts and knowledge which are based on personal knowledge, the  
12 following:

13 **PRELIMINARY ALLEGATIONS**

14 1. Defendant DIAB LEASING, INC. (“DEFENDANT” and/or “DEFENDANTS”)  
15 is a California Corporation and at all relevant times mentioned herein conducted and continues to  
16 conduct substantial and regular business throughout California.

17 2. DEFENDANT operates Wienerschnitzel franchises throughout California,  
18 including in Sacramento County, California locations where PLAINTIFF worked.

19 3. Plaintiff Ezell was employed by DEFENDANT in California as a non-exempt  
20 employee entitled to minimum wages, overtime pay and meal and rest periods from October 2020  
21 to March 2021.

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

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

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

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

**THE CONDUCT**

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2           8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
3 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,  
4 meaning the time during which an employee is subject to the control of an employer, including  
5 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT  
6 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all  
7 the time they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work  
8 before and after the beginning of her shift, spending time under DEFENDANTS' control for  
9 which they were not compensated, including time spent before their shift started and after it ended.  
10 As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage  
11 and overtime compensation by regularly working without their time being accurately recorded  
12 and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'  
13 uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members  
14 for all time worked is evidenced by DEFENDANTS' business records.

15           9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
16 CLASS Members were also from time to time unable to take off duty meal breaks and were not  
17 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS  
18 Members were from time to time interrupted during their off-duty meal breaks to complete tasks  
19 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to  
20 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
21 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and  
22 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which  
23 these employees were required by DEFENDANTS to work ten (10) hours of work.  
24 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to  
25 remain on-call and on-duty during what was supposed to be their off-duty meal periods.  
26 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks  
27 without additional compensation and in accordance with DEFENDANTS' strict corporate policy  
28 and practice.

1           10.     During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and  
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
3 without being provided ten (10) minute rest periods. Further, these employees were denied their  
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
6 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
7 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
8 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and  
9 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity  
10 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to  
11 remain on-duty and on-call and subject to DEFENDANTS' control in accordance with  
12 DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not  
13 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and  
14 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed  
15 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and  
16 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
17 DEFENDANTS and DEFENDANTS' managers.

18           11.     Under California law, every employer shall pay to each employee, on the  
19 established payday for the period involved, not less than the applicable minimum wage for all  
20 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
21 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
22 during which an employee is subject to the control of an employer and includes all the time the  
23 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and  
24 other CALIFORNIA CLASS Members were from time to time required to perform work for  
25 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal  
26 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS  
27 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.

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1 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members  
2 the applicable minimum wage for all hours worked in a payroll period.

3 12. In violation of the applicable sections of the California Labor Code and the  
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
5 matter of company policy, practice and procedure, intentionally and knowingly failed to  
6 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time  
7 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid  
8 the payment of the correct compensation as required by California law which allowed  
9 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied  
10 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
11 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

12 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members  
13 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when  
14 DEFENDANT miscalculated PLAINTIFF'S and other CALIFORNIA CLASS Members' regular  
15 rate of pay, DEFENDANTS also failed to provide PLAINTIFF and the other members of the  
16 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among  
17 other things, the correct time worked, including, work performed in excess of eight (8) hours in a  
18 workday and/or forty (40) hours in any workweek, and the gross wages paid for those periods  
19 during the pay period, and the correct penalty payments or missed meal and rest periods in  
20 violation of California Labor Code Sections 226 and 226.2.

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

1           15.    Aside from the violations listed herein, DEFENDANT failed to issue to  
2 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
3 Code 226 *et seq.* Specifically, DEFENDANT failed to include the complete address of the legal  
4 entity that is the employer. As a result, from time to time DEFENDANT provided PLAINTIFFS  
5 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.  
6 Lab. Code § 226.

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

18           17.    In the course of his employment, PLAINTIFF and other CALIFORNIA CLASS  
19 Members as a business expense, were required by DEFENDANTS to use their own personal  
20 cellular phones as a result of and in furtherance of their job duties as employees for  
21 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost  
22 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,  
23 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to  
24 use their personal cell phones for work related issues. As a result, in the course of their  
25 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA  
26 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
27 related to the use of their personal cellular phones all on behalf of and for the benefit of  
28 DEFENDANTS.



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

10           19. Specifically, as to PLAINTIFF, PLAINTIFF were from time to time unable to take  
11 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.  
12 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
13 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
14 provide PLAINTIFF with a second off-duty meal period each workday in which they were  
15 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
16 PLAINTIFF with a rest break, it required PLAINTIFF to remain on-duty and on-call for the rest  
17 break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call and on-duty during what  
18 was supposed to be their off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
19 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate  
20 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that  
21 failed to accurately display PLAINTIFF’S employer’s address, the correct time worked and  
22 wages, as well as payments for missed meal and rest periods for certain pay periods in violation  
23 of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the  
24 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.  
25 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of  
26 \$75,000.

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1 **JURISDICTION AND VENUE**

2 20. 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 PLAINTIFFS and similarly situated employees  
5 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

11 **THE CALIFORNIA CLASS**

12 22. PLAINTIFFS bring 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 23. 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 24. DEFENDANTS, 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 DEFENDANTS systematically failed to record all meal  
27 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,  
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1 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform  
2 this work and permitted or suffered to permit this work.

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

13 26. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
14 CLASS Members is impracticable.

15 27. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under  
16 California law by:

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
18 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
19 policies, practices and procedures that failed to pay all wages due the  
20 CALIFORNIA CLASS for all time worked;
- 21 b. Committing an act of unfair competition in violation of the California Unfair  
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
24 members;
- 25 c. Committing an act of unfair competition in violation of the California Unfair  
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.  
27 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS  
28 members with necessary expenses incurred in the discharge of their job duties; and

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d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

28. The 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 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 DEFENDANTS' 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 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANTS and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS' practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically under pays

1 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the  
2 members of the CALIFORNIA CLASS were and are similarly or identically  
3 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
4 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

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

- 24 1. Inconsistent or varying adjudications with respect to individual  
25 members of the CALIFORNIA CLASS, which would establish  
26 incompatible standards of conduct for the DEFENDANTS; and/or;  
27 2. Adjudications with respect to individual members of the  
28 CALIFORNIA CLASS would as a practical matter be dispositive

1 of the interests of the other members not parties to the adjudication  
2 or substantially impair or impede their ability to protect their  
3 interests;

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

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

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

17 a. The questions of law and fact common to the CALIFORNIA CLASS predominate  
18 over any question affecting only individual CALIFORNIA CLASS Members  
19 because the DEFENDANTS' employment practices are uniform and  
20 systematically applied with respect to the CALIFORNIA CLASS.

21 b. A Class Action is superior to any other available method for the fair and efficient  
22 adjudication of the claims of the members of the CALIFORNIA CLASS because  
23 in the context of employment litigation a substantial number of individual  
24 CALIFORNIA CLASS Members will avoid asserting their rights individually out  
25 of fear of retaliation or adverse impact on their employment;

26 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical  
27 to bring all members of the CALIFORNIA CLASS before the Court;

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- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
2 obtain effective and economic legal redress unless the action is maintained as a  
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief  
5 for the acts of unfair competition, statutory violations and other improprieties, and  
6 in obtaining adequate compensation for the damages and injuries which  
7 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of  
9 DEFENDANTS are sufficient to adequately compensate the members of the  
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANTS have acted or refused to act on grounds generally applicable to  
12 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
13 with respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
15 business records of DEFENDANTS; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an  
17 efficient and rapid conclusion to all litigation of all wage and hour related claims  
18 arising out of the conduct of DEFENDANTS as to the members of the  
19 CALIFORNIA CLASS.

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 32. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
27 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
28 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-



1 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint  
2 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS  
3 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
4 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
5 (\$5,000,000.00).

6 33. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
7 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
9 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time  
10 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
11 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the  
12 benefit of this work, required employees to perform this work and permitted or suffered to permit  
13 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-  
14 CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
15 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
16 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR  
17 SUB-CLASS PERIOD should be adjusted accordingly.

18 34. DEFENDANTS maintain records from which the Court can ascertain and identify  
19 by name and job title, each of DEFENDANTS’ employees who have been systematically,  
20 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and  
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any  
22 additional job titles of similarly situated employees when they have been identified.

23 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
24 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 27 a. Whether DEFENDANTS unlawfully failed to pay compensation due to members  
28 of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest breaks in

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violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate itemized wage statements;
- d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS' conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS 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

1 the correct minimum wage pay for which DEFENDANTS are liable pursuant to  
2 Cal. Lab. Code §§ 1194 and 1197;

3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and  
4 the other members of the CALIFORNIA CLASS with all legally required off-duty,  
5 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

6 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
8 statement in writing showing the address of the legal entity that is PLAINTIFF's  
9 employer, all accurate rates in effect during the pay period and the corresponding  
10 amount of time worked at each overtime rate by the employee;

11 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
12 CALIFORNIA CLASS members with necessary expenses incurred in the  
13 discharge of their job duties;

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

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

22 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
23 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
24 is impracticable and the disposition of their claims as a class will benefit the parties  
25 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 LABOR SUB-CLASS  
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1 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
2 CLASS;

3 c. The claims of the representative PLAINTIFF are typical of the claims of each  
4 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
5 other members of the CALIFORNIA LABORSUB-CLASS, were non-exempt  
6 employees paid on an hourly basis and paid additional non-discretionary incentive  
7 wages who was subjected to the DEFENDANTS' practice and policy which failed  
8 to pay the correct rate of overtime wages and total amount of wages due to the  
9 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
10 a result of DEFENDANTS' employment practices. PLAINTIFF and the members  
11 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
12 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
13 misconduct engaged in by DEFENDANTS; and

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

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

24 a. Without class certification and determination of declaratory, injunctive, statutory  
25 and other legal questions within the class format, prosecution of separate actions  
26 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
27 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 DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS 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.

40. 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 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
  - f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
  - g. DEFENDANTS 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 DEFENDANTS. 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 DEFENDANTS as to the members of the  
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

7 41. 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 42. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.  
11 Code § 17021.

12 43. 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 44. By the conduct alleged herein, DEFENDANTS 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 201, 202, 203, 204, 206.5, 246, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,  
27 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant  
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1 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
2 to constitute unfair competition, including restitution of wages wrongfully withheld.

3 45. By the conduct alleged herein, DEFENDANTS' practices were unlawful and  
4 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
5 unscrupulous or substantially injurious to employees, and were without valid justification or  
6 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203  
7 of the California Business & Professions Code, including restitution of wages wrongfully  
8 withheld.

9 46. By the conduct alleged herein, DEFENDANTS' practices were deceptive and  
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and  
11 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
12 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,  
13 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
14 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
15 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
16 wrongfully withheld.

17 47. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
18 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
20 DEFENDANTS.

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

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

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

4           51.    By and through the unlawful and unfair business practices described herein,  
5 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the  
6 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of  
7 valuable rights and benefits guaranteed by law and contract, all to the detriment of these  
8 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete  
9 against competitors who comply with the law.

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

15          53.    PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
16 and do, seek such relief as may be necessary to restore to them the money and property which  
17 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
19 business practices, including earned but unpaid wages.

20          54.    PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from  
23 engaging in any unlawful and unfair business practices in the future.

24          55.    PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a  
27 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these  
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

8 56. 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 of  
10 this Complaint.

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

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

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

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

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

27 62. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
2 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
3 pay.

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

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

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

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

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

28



1           71.    PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
3 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately  
4 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the  
5 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the  
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work  
7 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

18          75.    DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and  
19 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
20 amount of overtime worked. As set forth herein, DEFENDANTS' uniform policy and practice  
21 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked  
22 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
23 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for  
24 all overtime worked.

25          76.    DEFENDANTS' 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 denied accurate compensation to PLAINTIFF  
28 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,

1 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours  
2 in any workweek.

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

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

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

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

23 81. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the  
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
26 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
27 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed

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

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

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

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

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



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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

12 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
13 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
14 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 (10)  
19 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
20 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided  
22 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF  
23 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper  
24 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided  
25 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they  
26 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on  
27 DEFENDANTS' premises for those rest breaks.

28



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

9 96. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate  
10 employees with an "accurate itemized" statement in writing showing:

- 11 a. The total hours of compensable rest and recovery periods, the rate of
- 12 compensation, and the gross wages paid for those periods during the
- 13 pay period; and
- 14 b. The total hours of other nonproductive time, the rate of
- 15 compensation, and the gross wages paid for that time during the pay
- 16 period.

17 97. When DEFENDANTS did not accurately record PLAINTIFF'S and other  
18 CALIFORNIA CLASS Members' wages, including overtime wages, owed, DEFENDANT also  
19 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete  
20 and accurate wage statements which failed to show, among other things, the correct number of  
21 hours worked, missed meal and rest periods, owed to PLAINTIFF and other CALIFORNIA  
22 CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or  
23 her employees with an accurate itemized wage statement in writing showing, among other things,  
24 gross wages earned and all applicable hourly rates in effect during the pay period and the  
25 corresponding amount of time worked at each hourly rate. Aside from the violations listed above  
26 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
27 lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANT  
28 failed to include the address of the legal entity that is the employer, thereby violating Cal. Lab.

1 Code § 226. As a result, from time to time DEFENDANTS provided PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
3 226.

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

15 **SEVENTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

20 99. 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.

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

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

1           101. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by  
2 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
3 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
4 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
5 CLASS members for expenses which included, but were not limited to, costs related to using their  
6 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,  
7 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use  
8 their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and  
9 procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
10 members for expenses resulting from using their personal cellular phones for DEFENDANTS  
11 within the course and scope of their employment for DEFENDANTS. These expenses were  
12 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'  
13 conduct to assert any waiver of this expectation. Although these expenses were necessary  
14 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,  
15 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR  
16 SUB-CLASS members for these expenses as an employer is required to do under the laws and  
17 regulations of California.

18           102. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred  
19 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
20 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest  
21 at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **EIGHTH 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)**

6 103. 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.

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

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

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

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

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

107. There was no definite term in Plaintiff Haznedar's or any CALIFORNIA LABOR  
SUB-CLASS Members' employment contract.

108. Cal. Lab. Code § 203 provides:

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

6 109. The employment of Plaintiff and many CALIFORNIA LABOR SUB-CLASS  
7 Members terminated and DEFENDANTS have not tendered payment of wages, to these  
8 employees who missed meal and rest breaks, as required by law.

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

#### 15 NINTH CAUSE OF ACTION

#### 16 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

18 **(Alleged by PLAINTIFF against all Defendants)**

19 111. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
20 herein, the prior paragraphs of this Complaint.

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



1           113. PLAINTIFF, and such persons that may be added from time to time who satisfy  
2 the requirements and exhaust the administrative procedures under the Private Attorney General  
3 Act, bring this Representative Action on behalf of the State of California with respect to  
4 themselves and all individuals who are or previously were employed by DEFENDANT and  
5 classified as non-exempt employees in California during the time period of May 25, 2020 until  
6 the present (the "AGGRIEVED EMPLOYEES").

7           114. On May 25, 2021, PLAINTIFF gave written notice by certified mail to the Labor  
8 and Workforce Development Agency (the "Agency") and the employer of the specific  
9 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
10 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
11 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
12 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
13 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
14 EMPLOYEES as herein defined.

15           115. The policies, acts and practices heretofore described were and are an unlawful  
16 business act or practice because DEFENDANTS (a) failed to properly record and pay  
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,  
18 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized  
19 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to  
20 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code  
21 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,  
22 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,  
23 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to  
24 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil  
25 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
26 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
27 the other AGGRIEVED EMPLOYEES.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly  
3 and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for minimum wages, overtime wages, unreimbursed expenses, and other  
21 compensation due to PLAINTIFFS and the other members of the CALIFORNIA  
22 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
23 CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
27 which a violation occurs and one hundred dollars (\$100) per member of the  
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

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

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

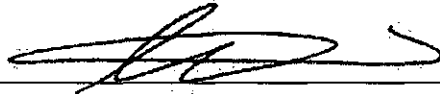
a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

DATED: July 29, 2021

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay  
Attorney for Plaintiff

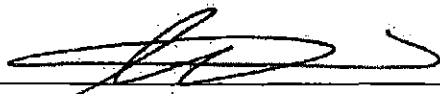
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**DEMAND FOR A JURY TRIAL**

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

DATED: July 29, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for Plaintiff

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