

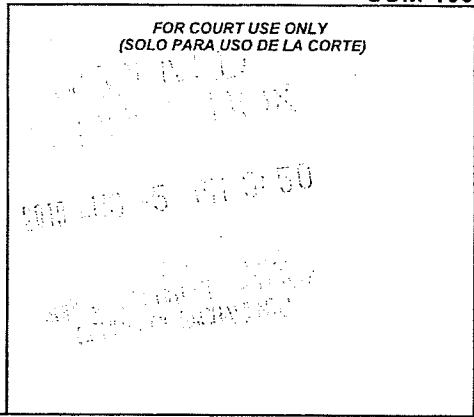
**SUMMONS
(CITACION JUDICIAL)**

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

EDWARD R. MARSZAL ENTERPRISES, INC., a California Corporation, and DOES 1-50, Inclusive

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

JIMMY R. MACK, an individual, on behalf of himself and on behalf of all persons similarly situated



NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

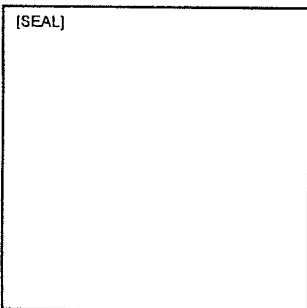
The name and address of the court is:
(El nombre y dirección de la corte es): Sacramento Superior Court
Gordon D. Schabar Sacramento County Courthouse
720 9th Street, Sacramento, California 95814

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., 5850 Oberlin Drive, Ste. 230A, San Diego, CA 92121, Telephone: (619) 892-7095

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (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)).



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):

BY FAX

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
San Diego, CA 92121
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203
4 Website: www.zakaylaw.com

5 **JCL LAW FIRM, APC**
Jean-Claude Lapuyade (State Bar #248676)
6 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
7 Telephone: (619)599-8292
8 Facsimile: (619) 599-8291
Website: www.jcl-lawfirm.com

9 Attorneys for Plaintiff

RECEIVED
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COUNTY OF SACRAMENTO

BY FAX

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR COUNTY OF SACRAMENTO**

13 JIMMY R. MACK, an individual, on behalf of
14 himself and on behalf of all persons similarly
situated,

15 Plaintiff,

16 v.

17 EDWARD R. MARSZAL ENTERPRISES,
18 INC., a California Corporation, and DOES 1-
50, Inclusive,

19 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant EDWARD R. MARSZAL ENTERPRISES, INC. (“ERM” or
6 “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted
7 and continues to conduct substantial and regular business throughout California.

8 2. ERM operates a fuel distribution company and is based in Folsom, California.

9 3. PLAINTIFF was employed by DEFENDANT in California from October 2018 to
10 April 2019 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required
11 meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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. PLAINTIFF
8 is informed and believes, and based upon that information and belief alleges, that the Defendants
9 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some
10 manner for one or more of the events and happenings that proximately caused the injuries and
11 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.

20 **THE CONDUCT**

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, as well as before
28 and after clocking in and out when PLAINTIFF’s shift has not yet started or should have ended.

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

6 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks
8 and are not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
9 CLASS Members are required to perform work as ordered by DEFENDANT for more than five
10 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to
11 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
12 for some workdays in which these employees are required by DEFENDANT to work ten (10)
13 hours of work. As a result, DEFENDANT’S failure to provide PLAINTIFF and the
14 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
15 DEFENDANT’S business records. PLAINTIFF and other members of the CALIFORNIA
16 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
17 DEFENDANT’S strict corporate policy and practice.

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

1 Order requires employers to provide employees with off-duty rest periods, which the California
2 Supreme Court defined as time during which an employee is relieved from all work related duties
3 and free from employer control. In so doing, the Court held that the requirement under California
4 law that employers authorize and permit all employees to take rest period means that employers
5 must relieve employees of all duties and relinquish control over how employees spend their time
6 which includes control over the locations where employees may take their rest period. Employers
7 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
8 minutes back. Here, DEFENDANT'S uniform policy restricted PLAINTIFF and other
9 CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
10 DEFENDANT'S rule pursuant to which PLAINTIFF and other CALIFORNIA CLASS Members
11 could not leave the work premises during their rest period.

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

23 12. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
24 Members as a business expense, were required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
26 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
27 their personal cellular phones for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
28 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell

1 phones to conduct work related business. As a result, in the course of their employment with
2 DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
3 unreimbursed business expenses which included, but were not limited to, costs related to the use
4 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
2 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9 **THE CALIFORNIA CLASS**

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

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

21 21. DEFENDANT, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
25 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
26 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
27 permits or suffers to permit this work.
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1 22. DEFENDANT have the legal burden to establish that each and every
2 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
3 required by California laws. DEFENDANT, however, as a matter of uniform and systematic
4 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still
5 fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
6 Member is paid as required by law. This common business practice is applicable to each and
7 every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,
8 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
9 causation, damages, and reliance are not elements of this claim.

10 23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
11 CLASS Members is impracticable.

12 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
13 California law by:

- 14 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
15 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
16 in place company policies, practices and procedures that uniformly and
17 systematically failed to record and pay PLAINTIFF and the other members of the
18 CALIFORNIA CLASS for all time worked, including minimum wages owed and
19 overtime wages owed for work performed by these employees;
- 20 b. Committing an act of unfair competition in violation of the UCL, by failing to
21 provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
22 CLASS members;
- 23 c. Committing an act of unfair competition in violation of the California Unfair
24 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
25 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
26 members with necessary expenses incurred in the discharge of their job duties.

27 25. The Class Action meets the statutory prerequisites for the maintenance of a Class
28 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, was 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 have 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.

26. 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 to 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 seeks declaratory relief holding that the DEFENDANT’S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available

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 27. 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 were 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 has 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 28. 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 29. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
14 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
15 CALIFORNIA CLASS who were employed by DEFENDANT in California (the “CALIFORNIA
16 LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the
17 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-
18 CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
19 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
20 (\$5,000,000.00).

21 30. DEFENDANT, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, willfully,
24 and systematically, engaged in a practice whereby DEFENDANT failed to correctly calculate
25 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required
27 employees to perform this work and permitted or suffered to permit this work. DEFENDANT has
28 uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these

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 31. DEFENDANT maintains 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 these
9 additional job titles when they have been identified.

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

12 33. 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 and
16 pay for 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 34. 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 is 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 is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, 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;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. 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.

35. 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

1 is impracticable and the disposition of their claims as a class will benefit the parties
2 and the Court;

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

7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
10 employee paid on an hourly basis who was subjected to the DEFENDANT'S
11 practice and policy which failed to pay the correct amount of wages due to the
12 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
13 a result of DEFENDANT'S employment practices. PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
15 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
16 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR
13 SUB-CLASS, making appropriate class-wide relief with respect to the
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
15 failed to pay all wages due. Including the correct wages for all time worked by the
16 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA 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.

37. 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;

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

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

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

12 39. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
13 Code § 17021.

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

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

25 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
26 engage in a business practice which violates California law, including but not limited to, the
27 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
28 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which

1 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
2 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
3 competition, including restitution of wages wrongfully withheld.

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

10 43. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
11 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
12 mandated meal and rest periods and the required amount of compensation for missed meal and
13 rest periods, and failed to pay minimum and overtime wages owed, and failed to reimburse all
14 necessary business expenses incurred, due to a systematic business practice that cannot be
15 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
16 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
17 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
18 restitution of wages wrongfully withheld.

19 44. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
20 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
21 other members of the CALIFORNIA CLASS to be underpaid during their employment with
22 DEFENDANT.

23 45. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
24 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
25 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
26 required by Cal. Lab. Code §§ 226.7 and 512.

27 46. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal

1 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
2 each workday in which a second off-duty meal period was not timely provided for each ten (10)
3 hours of work.

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

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

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of

1 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
2 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
4 and economic harm unless DEFENDANT is restrained from continuing to engage in these
5 unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

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

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

11 53. 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 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
16 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
17 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

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

14 61. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
16 the correct minimum wage compensation for their time worked for DEFENDANT.

17 62. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
19 they were entitled to, constituting a failure to pay all earned wages.

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

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

1 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
3 minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

3 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

6 67. 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 68. 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 pay these
12 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
13 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

16 70. Cal. Lab. Code § 510 provides that employees in California shall not be employed
17 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
18 they receive additional compensation beyond their regular wages in amounts specified by law.

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

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

26 73. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
28 of implementing a uniform policy and practice that failed to accurately record overtime worked

1 by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 for overtime worked, including, the overtime work performed in excess of eight (8) hours in a
4 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

5 74. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
8 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
9 California Labor Code, the Industrial Welfare Commission requirements and other applicable
10 laws and regulations.

11 75. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
13 the correct overtime compensation for their time worked for DEFENDANT.

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

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

25 78. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
27 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, &
28 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
2 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
3 DEFENDANT’S business records and witnessed by employees.

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

10 80. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
12 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
14 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
15 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct overtime wages
16 for their overtime worked.

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

25 82. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
26 SUB-CLASS request recovery of overtime wages, according to proof, interest, statutory costs, as
27 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
28 the California Labor Code and/or other applicable statutes. To the extent overtime compensation

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

12 83. 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 84. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
16 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
17 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
18 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
19 not prevent these employees from being relieved of all of their duties for the legally required off-
20 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
22 DEFENDANT for their meal periods. Additionally, DEFENDANT’S failure to provide
23 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
24 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT’S business records.
25 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with
26 a second off-duty meal period in some workdays in which these employees were required by
27 DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of
28

1 the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT’S strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

1 personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
2 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
3 their personal cell phones for work-related business. DEFENDANT’S uniform policy, practice
4 and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for expenses resulting from using their personal cellular phones for DEFENDANT
6 within the course and scope of their employment for DEFENDANT. These expenses were
7 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT’S
8 conduct to assert any waiver of this expectation. Although these expenses were necessary
9 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
10 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
11 SUB-CLASS members for these expenses as an employer is required to do under the laws and
12 regulations of California.

13 94. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
14 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
15 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
16 the statutory rate and costs under Cal. Lab. Code § 2802.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

19 **(Cal. Lab. Code § 226)**

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

22 95. 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 96. 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. (2) 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 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits without providing a
10 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
11 designates a mailing address. The date of the mailing shall constitute the date of payment
12 for purposes of the requirement to provide payment within 72 hours of the notice of
13 quitting.

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

16 104. Cal. Lab. Code § 203 provides:

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

22 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members terminated and DEFENDANT has not tendered payment of wages to these employees
24 who missed meal and rest breaks, as required by law.

25 106. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
26 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
27 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for
28 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS

1 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory
2 costs as allowed by law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
5 severally, as follows:

6
7 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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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


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

3. On all claims:

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

DATED: August __, 2019

ZAKAY LAW GROUP, APLC


By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: August __, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF