

SUMMONS (CITACION JUDICIAL)

ENDORSED
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ALAMEDA COUNTY
MAY 21 2021
CLERK OF THE SUPERIOR COURT
By NICOLE HALL

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

FERMA GREENBOX, INC., a California Corporation; FERMA CORPORATION, a California Corporation; and DOES 1-50, Inclusive,

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

PEDRO RODRIGUEZ and JOSE GARCIA, individuals, on behalf of themselves 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): Alameda - René C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER: (Número del Caso):
RG21101104

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):

ZAKAY LAW GROUP, APLC, 3990 CHAD FINKE Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE: **MAY 21 2021** CHAD FINKE, EXECUTIVE OFFICER/CLERK Clerk, by **NICOLE HALL**, 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)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

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

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

8 Attorneys for Plaintiffs

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

11 **PEDRO RODRIGUEZ and JOSE GARCIA,**
12 individuals, on behalf of themselves and on
behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 **FERMA GREENBOX, INC.,** a California
16 Corporation; **FERMA CORPORATION,** a
California Corporation; and **DOES 1-50,**
17 Inclusive,

18 Defendants.

Case No: **RG21101104**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 21 2021

CLERK OF THE SUPERIOR COURT
By NICOLE HALL

1 Plaintiffs Pedro Rodriquez and Jose Garcia, individuals, (“PLAINTIFFS”), on behalf of
2 themselves and all other similarly situated current and former employees, allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant FERMA GREENBOX, INC. (“Defendant FERMA Greenbox”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. Defendant FERMA CORPORATION (“Defendant FERMA Corporation”) is a
10 California corporation and at all relevant times mentioned herein conducted and continues to
11 conduct substantial and regular business throughout California.

12 3. Defendant FERMA Greenbox and Defendant FERMA Corporation were the joint
13 employers of PLAINTIFFS as evidenced by the contracts signed and by the company the
14 PLAINTIFFS performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein and collectively referred to herein as “DEFENDANT” and/or
16 “DEFENDANTS.”

17 4. DEFENDANTS are California Corporations that provide debris box hauling
18 services to general contractors, residential, industrial, commercial, state and government facilities,
19 including in Alameda County, California where PLAINTIFFS worked.

20 5. Plaintiff Rodriquez has been employed by DEFENDANTS in California as a non-
21 exempt employee entitled to minimum wages, overtime pay and meal and rest periods since May
22 of 2016.

23 6. Plaintiff Garcia has been employed by DEFENDANTS in California as a non-
24 exempt employee entitled to minimum wages, overtime pay and meal and rest periods since
25 August of 2016.

26 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California
27 class, defined as all individuals who are or previously were employed by Defendant FERMA
28 Greenbox and/or Defendant FERMA Corporation in California and classified as non-exempt
employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years

1 prior to the filing of the Complaint and ending on the date as determined by the Court (the
2 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
3 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

24 10. The agents, servants and/or employees of the DEFENDANT and each of them
25 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
26 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
27 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and

1 all DEFENDANT are jointly and severally liable to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 DEFENDANT's agents, servants and/or employees.

4 **THE CONDUCT**

5 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
6 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time
7 worked, meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. From time to time,
9 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without
10 paying them for all the time they were under DEFENDANTS' control. Specifically, due to
11 DEFENDANTS' unlawful rounding policy, PLAINTIFFS performed work before and after the
12 beginning of their shift, spending time under DEFENDANTS' control for which they were not
13 compensated. Specifically, DEFENDANTS from time-to-time required PLAINTIFFS and other
14 CALIFORNIA CLASS Members to perform work an hour before their scheduled shifts for which
15 DEFENDANTS failed to provide compensation. Further, DEFENDANTS from time-to-time
16 required PLAINTIFFS and other CALIFORNIA CLASS Members to falsify their time records in
17 order to avoid paying PLAINTIFFS and other CALIFORNIA CLASS Members for all their time
18 worked. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited
19 minimum wage and overtime compensation by regularly working without their time being
20 accurately recorded and without compensation at the applicable minimum wage and overtime
21 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other
22 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
23 records.

24 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
25 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
27 overtime hours. As a result, DEFENDANTS were able to and did in fact unlawfully, and
28 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and

1 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
2 applicable overtime compensation for overtime worked and to avoid paying these employees for
3 missed meal breaks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
4 time to time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable overtime rates.

6 13. The mutability of the timekeeping system also allowed DEFENDANTS to alter
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
8 timekeeping system so as to create the appearance that PLAINTIFFS and other CALIFORNIA
9 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
10 were not at all times provided an off-duty meal break. This practice is a direct result of
11 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
12 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

25 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
26 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
27 without being provided ten (10) minute rest periods. Further, these employees were denied their
28 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)

1 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
2 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
3 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
4 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
5 required by DEFENDANT to work during their rest breaks. When they did have an opportunity
6 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
7 remain on-duty and on-call, and subject to DEFENDANT's control in accordance with
8 DEFENDANT's policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not
9 provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,
10 PLAINTIFFS and other CALIFORNIA CLASS Members were periodically denied their proper
11 rest periods by DEFENDANT and DEFENDANT'S managers.

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

24 17. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time
28 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the

1 payment of the correct compensation as required by California law which allowed DEFENDANT
2 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
3 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 18. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
6 Members worked during what was supposed to be their meal breaks or otherwise off the clock,
7 DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS with complete and accurate wage statements which failed to show, among other things,
9 the correct time worked, including, work performed in excess of eight (8) hours in a workday
10 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
11 pay period, and the correct penalty payments or missed meal and rest periods in violation of
12 California Labor Code Sections 226 and 226.2.

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

21 20. . From time-to-time during the CLASS PERIOD, predicated on the conduct
22 described herein, DEFENDANT issued inaccurate itemized wage statements to PLAINITFFS that
23 failed to accurately show (1) gross wages earned, (2) total hours worked, (4) all deductions, (5)
24 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (8) the
25 name and address of the legal entity that is the employer and, (9) all applicable hourly rates in
26 effect during the pay period and the corresponding number of hours worked at each hourly rate
27 by the employee. As a result, from time-to-time DEFENDANT provided PLAINTIFFS and the
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1 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

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

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

3 **JURISDICTION AND VENUE**

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

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

13 **THE CALIFORNIA CLASS**

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

23 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
25 accordingly.

26 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this
4 work and permitted or suffered to permit this work.

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

14 29. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

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

1 failed to record and pay PLAINTIFFS and other members of the CALIFORNIA
2 CLASS for all time worked, including minimum wages owed and overtime wages
3 owed for work performed by these employees.

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

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

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

12 c. The claims of the representative PLAINTIFFS are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members
14 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on
15 an hourly basis who was subjected to the DEFENDANT’S deceptive practice and
16 policy which failed to provide the legally required meal and rest periods to the
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to
18 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic
19 injury as a result of DEFENDANT’S employment practices. PLAINTIFFS and the
20 members of the CALIFORNIA CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and

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

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT’S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

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

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

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

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

15 **THE CALIFORNIA LABOR SUB-CLASS**

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

23 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for the time
27 worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 and other wages and premiums owed to these employees, even though DEFENDANT enjoyed

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

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

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

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

- 16 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
17 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
18 missed meal and rest breaks in violation of the California Labor Code and
19 California regulations and the applicable California Wage Order;
- 20 b. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
22 thirty (30) minute meal breaks and rest periods;
- 23 c. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
25 statements;
- 26 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
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- 1 violation of the California Labor Code and California regulations and the
- 2 applicable California Wage Order;
- 3 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 4 compensation for time worked, including overtime worked, under the overtime
- 5 pay requirements of California law;
- 6 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 7 conduct;
- 8 g. The proper measure of damages and penalties owed to the members of the
- 9 CALIFORNIA LABOR SUB-CLASS; and
- 10 h. Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

27 d. The representative PLAINTIFFS will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are no
2 material conflicts between the claims of the representative PLAINTIFFS and the
3 members of the CALIFORNIA LABOR SUB-CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
6 Members.

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

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

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

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

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

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

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

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

43. 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 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. PLAINTIFFS, 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;

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

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANT)**

20 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

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

8 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
11 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and
12 1198, The Fair Labor Standards Act and federal regulations promulgated thereunder, for
13 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
14 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
15 competition, including restitution of wages wrongfully withheld.

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

22 49. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
23 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFFS, and
24 other members of the CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime
25 worked, failed to pay minimum wages, failed to accurately to record the time worked, and failed
26 to reimburse for expenses due to a systematic practice that cannot be justified, pursuant to the
27 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
28 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

50. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFFS and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 51. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
4 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

6 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
8 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
9 each workday in which a second off-duty meal period was not timely provided for each ten (10)
10 hours of work.

11 53. PLAINTIFFS further demand on behalf of themselves and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
13 not timely provided as required by law.

14 54. By and through the unlawful and unfair business practices described herein,
15 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
16 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
17 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
18 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
19 against competitors who comply with the law.

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

25 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
26 to, and do, seek such relief as may be necessary to restore to them the money and property which
27 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
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1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
2 business practices, including earned but unpaid wages.

3 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
6 engaging in any unlawful and unfair business practices in the future.

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

14 **SECOND CAUSE OF ACTION**

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

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

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

22 60. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
25 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

26 61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
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1 62. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a wage less than
3 the minimum so fixed is unlawful.

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

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

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

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

22 67. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
24 the correct minimum wage compensation for their time worked for DEFENDANT.

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

28 69. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA

1 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
2 which are presently unknown to them and which will be ascertained according to proof at trial.

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

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

18 72. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
19 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
20 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
21 the California Labor Code and/or other applicable statutes. To the extent minimum wage
22 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
23 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
24 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
25 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
26 SUB-CLASS Members. DEFENDANT'S conduct as alleged herein was willful, intentional and
27 not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
28 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**
5 **DEFENDANT)**

6 73. PLAINTIFFS, 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 74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
11 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
12 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the
13 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
14 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
15 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

26 78. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
27 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
28 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed
3 to pay these employees the correct applicable overtime wages for all overtime worked.

4 79. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
6 of implementing a uniform policy and practice that denied accurate compensation to
7 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
8 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or
9 forty (40) hours in any workweek.

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

16 81. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
18 full compensation for all overtime worked.

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

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

1 84. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
4 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
6 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’S
7 business records and witnessed by employees.

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

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

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

28 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
therefore request recovery of all unpaid wages, including overtime wages, according to proof,
interest, statutory costs, as well as the assessment of any statutory penalties against

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

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
11 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code §§ 226 and 226.2)**

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

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

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

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

1 employee identification number other than a social security number may be shown
2 on the itemized statement;

3 h. The name and address of the legal entity that is the employer; and

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

6 99. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
7 employees with an “accurate itemized” statement in writing showing:

8 a. The total hours of compensable rest and recovery periods, the rate of
9 compensation, and the gross wages paid for those periods during the
10 pay period; and

11 b. The total hours of other nonproductive time, the rate of
12 compensation, and the gross wages paid for that time during the pay
13 period.

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

28

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

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WHEN DUE**

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

15 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
 16 **DEFENDANT)**

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

20 103. Cal. Lab. Code § 200 provides that:

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

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

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

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

10 106. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
11 CLASS Members' employment contract.

12 107. Cal. Lab. Code § 203 provides:

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

18 108. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
19 CLASS Members terminated and DEFENDANT has not tendered payment of wages, to these
20 employees who missed meal and rest breaks, as required by law.

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

27 **EIGHTH CAUSE OF ACTION**

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

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

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

16 113. On March 3, 2021, PLAINTIFF gave written notice by certified mail to the Labor
17 and Workforce Development Agency (the "Agency") and the employer of the specific
18 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
19 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
20 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
21 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
22 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
23 AGGRIEVED EMPLOYEES as herein defined.

24 114. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
26 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
27 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
28 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in

1 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
2 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,
3 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804,
4 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
5 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
6 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
7 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly
and severally, as follows:

11
12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
25 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
26 pursuant to Cal. Code of Civ. Proc. § 382;
- 27 b. Compensatory damages, according to proof at trial, including compensatory
28 damages for minimum wages, overtime wages, and other compensation due to

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PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per 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; 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 and/or §1197.

DATED: May 7, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: May 7, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

EXHIBIT 1



Jean-Claude Lapuyade, Esq.
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March 3, 2021

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

FERMA CORPORATION
c/o Donald Carlo Ferrari
6639 Smith Avenue
Newark, CA 94560
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 6017

FERMA GREENBOX, INC.

c/o Roy Ferrari
6647 Smith Avenue
Newark, CA 94560
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 5751

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents JOSE GARCIA and PEDRO RODRIGUEZ (“Plaintiffs”) and other aggrieved employees in a proposed class and representative action against FERMA GREENBOX, INC. and FERMA CORPORATION (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiffs and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff Garcia was employed by Defendants in California from August of 2016 to December of 2020. Plaintiff Rodriguez has been employed by Defendants in California since May of 2016. Plaintiffs were paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendants failed to, among other things, provide Plaintiffs, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiffs contend that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide

California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiffs, and (v) sets forth the illegal practices used by Defendants. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

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

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

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **ZAKAY LAW GROUP, APLC**
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2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203

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

8 Attorneys for Plaintiffs

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

11 JOSE GARCIA and PEDRO RODRIGUEZ,
12 individuals, on behalf of themselves and on
behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 FERMA GREENBOX, INC., a California
16 Corporation; FERMA CORPORATION, a
California Corporation; and DOES 1-50,
17 Inclusive,

18 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq*.

DEMAND FOR A JURY TRIAL

1 Plaintiffs Jose Garcia and Pedro Rodriguez, individuals, (“PLAINTIFFS”), on behalf of
2 themselves and all other similarly situated current and former employees, allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant FERMA GREENBOX, INC. (“Defendant FERMA Greenbox”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. Defendant FERMA CORPORATION (“Defendant FERMA Corporation”) is a
10 California corporation and at all relevant times mentioned herein conducted and continues to
11 conduct substantial and regular business throughout California.

12 3. Defendant FERMA Greenbox and Defendant FERMA Corporation were the joint
13 employers of PLAINTIFFS as evidenced by the contracts signed and by the company the
14 PLAINTIFFS performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein and collectively referred to herein as “DEFENDANT” and/or
16 “DEFENDANTS.”

17 4. DEFENDANTS are California Corporations that provide debris box hauling
18 services to general contractors, residential, industrial, commercial, state and government facilities,
19 including in Alameda County, California where PLAINTIFFS worked.

20 5. Plaintiff Garcia was employed by DEFENDANTS in California as a non-exempt
21 employee entitled to minimum wages, overtime pay and meal and rest periods from August of
22 2016 to December of 2020.

23 6. Plaintiff Rodriguez has been employed by DEFENDANTS in California as a non-
24 exempt employee entitled to minimum wages, overtime pay and meal and rest periods since May
25 of 2016.

26 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California
27 class, defined as all individuals who are or previously were employed by Defendant FERMA
28 Greenbox and/or Defendant FERMA Corporation in California and classified as non-exempt
employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years

1 prior to the filing of the Complaint and ending on the date as determined by the Court (the
2 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
3 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

24 10. The agents, servants and/or employees of the DEFENDANT and each of them
25 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
26 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
27 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and

1 all DEFENDANT are jointly and severally liable to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 DEFENDANT's agents, servants and/or employees.

4 **THE CONDUCT**

5 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
6 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time
7 worked, meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. From time to time,
9 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without
10 paying them for all the time they were under DEFENDANTS' control. Specifically, due to
11 DEFENDANTS' unlawful rounding policy, PLAINTIFFS performed work before and after the
12 beginning of their shift, spending time under DEFENDANTS' control for which they were not
13 compensated. Specifically, DEFENDANTS from time-to-time required PLAINTIFFS and other
14 CALIFORNIA CLASS Members to perform work an hour before their scheduled shifts for which
15 DEFENDANTS failed to provide compensation. Further, DEFENDANTS from time-to-time
16 required PLAINTIFFS and other CALIFORNIA CLASS Members to falsify their time records in
17 order to avoid paying PLAINTIFFS and other CALIFORNIA CLASS Members for all their time
18 worked. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited
19 minimum wage and overtime compensation by regularly working without their time being
20 accurately recorded and without compensation at the applicable minimum wage and overtime
21 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other
22 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
23 records.

24 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
25 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
27 overtime hours. As a result, DEFENDANTS were able to and did in fact unlawfully, and
28 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and

1 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
2 applicable overtime compensation for overtime worked and to avoid paying these employees for
3 missed meal breaks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
4 time to time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable overtime rates.

6 13. The mutability of the timekeeping system also allowed DEFENDANTS to alter
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
8 timekeeping system so as to create the appearance that PLAINTIFFS and other CALIFORNIA
9 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
10 were not at all times provided an off-duty meal break. This practice is a direct result of
11 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
12 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

25 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
26 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
27 without being provided ten (10) minute rest periods. Further, these employees were denied their
28 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)

1 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
2 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
3 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
4 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
5 required by DEFENDANT to work during their rest breaks. When they did have an opportunity
6 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
7 remain on-duty and on-call, and subject to DEFENDANT's control in accordance with
8 DEFENDANT's policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not
9 provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,
10 PLAINTIFFS and other CALIFORNIA CLASS Members were periodically denied their proper
11 rest periods by DEFENDANT and DEFENDANT'S managers.

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

24 17. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time
28 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the

1 payment of the correct compensation as required by California law which allowed DEFENDANT
2 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
3 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
4 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 18. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
6 Members worked during what was supposed to be their meal breaks or otherwise off the clock,
7 DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS with complete and accurate wage statements which failed to show, among other things,
9 the correct time worked, including, work performed in excess of eight (8) hours in a workday
10 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
11 pay period, and the correct penalty payments or missed meal and rest periods in violation of
12 California Labor Code Sections 226 and 226.2.

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

21 20. From time-to-time during the CLASS PERIOD, predicated on the conduct
22 described herein, DEFENDANT issued inaccurate itemized wage statements to PLAINTIFFS that
23 failed to accurately show (1) gross wages earned, (2) total hours worked, (4) all deductions, (5)
24 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (8) the
25 name and address of the legal entity that is the employer and, (9) all applicable hourly rates in
26 effect during the pay period and the corresponding number of hours worked at each hourly rate
27 by the employee. As a result, from time-to-time DEFENDANT provided PLAINTIFFS and the
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1 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 21. California Labor Code Section 246 mandates that paid sick time for non-
4 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
5 which the non-exempt employee uses paid sick time, whether or not the employee actually works
6 overtime in that workweek.

7 22. California Labor Code Section 246, *et seq.* requires an employer to furnish its
8 employees with written wage statements setting forth the amount of paid sick leave available.
9 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
10 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
11 of paid sick leave available.

12 23. By reason of this uniform conduct applicable to PLAINTIFFS and all
13 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
14 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
15 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
16 calculate and record all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA
17 CLASS Members, and failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
18 the correct overtime rate. The proper recording of these employees’ missed meal and rest breaks,
19 and proper payment of minimum wages and overtime, is the DEFENDANT’S burden. As a result
20 of DEFENDANT’S intentional disregard of the obligation to meet this burden, DEFENDANT
21 failed to properly pay all required compensation for work performed by the members of the
22 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
23 thereunder as herein alleged.

24 24. Specifically, PLAINTIFFS were from time to time unable to take off duty meal
25 and rest breaks and were not fully relieved of duty for their rest and meal periods. PLAINTIFFS
26 were required to perform work as ordered by DEFENDANTS for more than five (5) hours during
27 a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide
28 PLAINTIFFS with a second off-duty meal period each workday in which they were required by

1 DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFFS
2 with a rest break, they required PLAINTIFFS to remain on-duty and on-call, for the rest break.
3 PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in
4 accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
5 DEFENDANTS also provided PLAINTIFFS with a paystub that failed to accurately display
6 PLAINTIFFS' correct time worked and wages, as well as payments for missed meal and rest
7 periods for certain pay periods in violation of Cal. Lab. Code § 226(a). Further, DEFENDANT
8 from time to time failed to provide PLAINTIFFS with a wage statement setting forth the amount
9 of paid sick leave available to them, as required by Cal. Lab. Code § 246, *et seq.* To date,
10 DEFENDANTS have not fully paid Plaintiff Garcia the overtime compensation still owed to him
11 or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
12 PLAINTIFFS individually do not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

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

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

23 **THE CALIFORNIA CLASS**

24 27. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
27 individuals who are or previously were employed by Defendant FERMA Greenbox and/or
28 Defendant FERMA Corporation in California and classified as non-exempt employees (the

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

5 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

8 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
12 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,
13 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this
14 work and permitted or suffered to permit this work.

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

24 31. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
27 California law by:
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- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members; and,
- c. 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 PLAINTIFFS 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.

33. 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 PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to

1 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic
2 injury as a result of DEFENDANT’S employment practices. PLAINTIFFS and the
3 members of the CALIFORNIA CLASS were and are similarly or identically
4 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
5 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

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

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 PLAINTIFFS seek declaratory relief holding
6 that the DEFENDANT'S policy and practices constitute unfair
7 competition, along with declaratory relief, injunctive relief, and incidental
8 equitable relief as may be necessary to prevent and remedy the conduct
9 declared to 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 DEFENDANT; and/or;

27 2. Adjudications with respect to individual members of the
28 CALIFORNIA CLASS would as a practical matter be dispositive

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

- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’S employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

- 1 d. PLAINTIFFS, 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 DEFENDANT’S actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANT are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
12 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
13 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 DEFENDANT; 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 DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

20 36. DEFENDANT maintain records from which the Court can ascertain and identify
21 by job title each of DEFENDANT’S employees who as have been systematically, intentionally
22 and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein
23 alleged. PLAINTIFFS 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 37. 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 38. DEFENDANT, 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 DEFENDANT failed to correctly pay for the time
10 worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 and other wages and premiums owed to these employees, even though DEFENDANT enjoyed
12 the benefit of this work, required employees to perform this work and permitted or suffered to
13 permit this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR
14 SUB-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 DEFENDANT, the CALIFORNIA LABOR SUB-
17 CLASS PERIOD should be adjusted accordingly.

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

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

25 41. 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 DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for

- 1 missed meal and rest breaks in violation of the California Labor Code and
2 California regulations and the applicable California Wage Order;
- 3 b. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
4 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
5 thirty (30) minute meal breaks and rest periods;
- 6 c. Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
8 statements;
- 9 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
10 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
11 violation of the California Labor Code and California regulations and the
12 applicable California Wage Order;
- 13 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
14 compensation for time worked, including overtime worked, under the overtime
15 pay requirements of California law;
- 16 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
17 conduct;
- 18 g. The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and
- 20 h. Whether DEFENDANT's conduct was willful.
- 21 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
22 under California law by:
- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS
24 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
25 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code
26 § 1194;
- 27 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
28 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS

- 1 the correct minimum wage pay for which DEFENDANT 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 PLAINTIFFS
4 and the other members of the CALIFORNIA CLASS with all legally required off-
5 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest
6 breaks;
- 7 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
9 statement in writing showing all accurate rates in effect during the pay period and
10 the corresponding amount of time worked at each overtime rate by the employee;
- 11 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
12 employee is discharged or quits from employment, the employer must pay the
13 employee all wages due without abatement, by failing to tender full payment
14 and/or restitution of wages owed or in the manner required by California law to
15 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
16 their employment; and
- 17 f. Violating Cal. Lab. Code § 246, which provides that an employer must furnish its
18 employees with written wage statements setting forth the amount of paid sick leave
19 available to them.

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

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

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

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

27 i. Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA LABOR SUB-CLASS which would establish

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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:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which

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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.

45. 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 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting

- 1 their rights individually out of fear of retaliation or adverse impact on their
2 employment;
- 3 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
4 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
5 before the Court;
- 6 d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will
7 not be able to obtain effective and economic legal redress unless the action is
8 maintained as a Class Action;
- 9 e. There is a community of interest in obtaining appropriate legal and equitable relief
10 for the acts of unfair competition, statutory violations and other improprieties, and
11 in obtaining adequate compensation for the damages and injuries which
12 DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-
13 CLASS;
- 14 f. There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of the
16 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 17 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
18 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
19 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 20 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANT. The CALIFORNIA
22 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
23 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
24 PERIOD; and
- 25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANT as to the members of the
28 CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANT)**

5 46. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
25 and 1198 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 50. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 51. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
4 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFFS, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
7 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
8 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
10 wrongfully withheld.

11 52. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
12 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFFS and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 53. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
16 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

23 55. PLAINTIFFS further demand on behalf of themselves and on behalf of each
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
25 not timely provided as required by law.

26 56. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

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

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

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

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

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

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SECOND CAUSE OF ACTION

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

**(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANT)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

28 83. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
full compensation for all overtime worked.

1 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
2 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
3 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and
4 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid
5 collective bargaining agreement that would preclude the causes of action contained herein this
6 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the
7 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT’S violations of non-negotiable,
8 non-waivable rights provided by the State of California.

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

28 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of

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

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

22 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **DEFENDANT)**

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

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

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code §§ 226 and 226.2)**

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

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

22 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
23 “accurate itemized” statement in writing showing:

- 24 a. Gross wages earned;
- 25 b. Total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission;

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

14 101. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
15 employees with an “accurate itemized” statement in writing showing:

- 16 a. The total hours of compensable rest and recovery periods, the rate of
- 17 compensation, and the gross wages paid for those periods during the
- 18 pay period; and
- 19 b. The total hours of other nonproductive time, the rate of
- 20 compensation, and the gross wages paid for that time during the pay
- 21 period.

22 102. When DEFENDANT did not accurately record PLAINTIFFS’ and other
23 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also
24 failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with
25 complete and accurate wage statements which failed to show, among other things, the correct
26 overtime rate, the correct number of hours worked, missed meal and rest periods, owed to
27 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that
28 every employer shall furnish each of his or her employees with an accurate itemized wage

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN DUE**

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

22 **(Alleged by Plaintiff Garcia and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **DEFENDANT)**

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

27 105. Cal. Lab. Code § 200 provides that:
28

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

7 106. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable
9 immediately."

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

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

20 108. There was no definite term in Plaintiff Garcia or any CALIFORNIA LABOR
21 SUB-CLASS Members' employment contract.

22 109. Cal. Lab. Code § 203 provides:

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

28 110. The employment of Plaintiff Garcia and many CALIFORNIA LABOR SUB-
CLASS Members terminated and DEFENDANT has not tendered payment of wages, to these
employees who missed meal and rest breaks, as required by law.

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

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

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

5 (Cal. Lab. Code § 246, *et seq.*)

6 (Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all
7 DEFENDANT)

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

11 113. Cal. Lab. Code § 246(i) provides that:

12 An employer shall provide an employee with written notice that sets forth the
13 amount of paid sick leave available, or paid time off leave an employer provides in
14 lieu of sick leave, for use on either the employee’s itemized wage statement
15 described in Section 226 or in a separate writing provided on the designated pay
16 date with the employee’s payment of wages. If an employer provides unlimited paid
17 sick leave or unlimited paid time off to an employee, the employer may satisfy this
18 section by indicating on the notice or the employee’s itemized wage statement
19 “unlimited.”

20 114. From time to time, DEFENDANT failed to furnish PLAINTIFFS and other
21 members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth
22 the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*
23 As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR-SUBCLASS are
24 entitled to seek and recover statutory costs.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly
27 and severally, as follows:

28 1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining

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- DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT’S violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, and other compensation due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per 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; 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; and
 - f. The statutory damages and an award of costs for violation of Cal. Lab. Code § 246.

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3. On all claims:

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

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