

FEB 11 2019

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

13 TIFFANY RODRIGUEZ, an individual, on
14 behalf of herself and on behalf of all persons
15 similarly situated,

16 Plaintiff,

17 v.

18 CIRCLE K STORES INC., a Corporation; and
DOES 1-50, Inclusive,

19 Defendants.
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Case No: **RIC 1901407**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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By Fax

1 Plaintiff Tiffany Rodriguez (“PLAINTIFF”), an individual, on behalf of herself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 for her own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. Defendant Circle K Stores Inc. (“DEFENDANT”) is a Corporation and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT is a Canadian-owned American chain of convenience stores.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to overtime pay and meal and rest periods from September of 2012 to October
12 of 2018. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
13 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
14 compensation from DEFENDANT in the form of non-discretionary incentive wages.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their overtime worked.
26 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
27 business practice whereby DEFENDANT retained and continues to retain wages due
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1 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
2 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
3 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
4 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
5 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

23
24 **THE CONDUCT**

25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
26 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for their overtime worked and the correct rate for missed meal premiums.

1 DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for overtime
2 worked and missed meal premiums owed to PLAINTIFF and other members of the
3 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime and meal
4 premium compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA
5 CLASS forfeited wages due them for working overtime and missing meal periods without
6 compensation at the correct overtime and meal premium rates. DEFENDANT's uniform policy
7 and practice to not pay the members of the CALIFORNIA CLASS the correct overtime rate for
8 all overtime worked and correct meal premium pay for missed meal periods in accordance with
9 applicable law is evidenced by DEFENDANT's business records.

10 9. State law provides that employees must be paid overtime and meal break
11 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
12 CALIFORNIA CLASS Members were compensated at an hourly rate plus various incentive pay
13 that was tied to specific elements of an employee's performance.

14 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
15 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
16 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
17 performance for DEFENDANT. The non-discretionary incentive program provided all
18 employees paid on an hourly basis with incentive compensation when the employees met the
19 various performance goals set by DEFENDANT. However, when calculating the regular rate
20 of pay in order to pay overtime and missed meal premiums to PLAINTIFF and other
21 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
22 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
23 missed meal premium pay. Management and supervisors described the incentive program to
24 potential and new employees as part of the compensation package. As a matter of law, the
25 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
26 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
27 underpayment of overtime compensation and meal premium pay to PLAINTIFF and other
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1 CALIFORNIA CLASS Members by DEFENDANT. This uniform policy and practice of
2 DEFENDANT was intended to purposefully avoid the payment of the correct overtime
3 compensation as required by California law and the Fair Labor Standards Act which allowed
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law.

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

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

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

11 14. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
12 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
13 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
14 CLASS with complete and accurate wage statements which failed to show, among other things,
15 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
16 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
17 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
18 furnish each of his or her employees with an accurate itemized wage statement in writing
19 showing, among other things, gross wages earned and all applicable hourly rates in effect during
20 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
21 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
22 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
23 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
24 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

25 15. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond
26 and provide PLAINTIFF with her employment file. Section 1198.5 states that employees (and
27 former employees) have the right to inspect personnel records maintained by the employer
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1 “related to the employee’s performance or to any grievance concerning the employee.”
2 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
3 requested her employment file via certified mail multiple times and DEFENDANT failed to
4 respond each time. As a result, PLAINTIFF is now entitled to a statutory penalty of \$750 and
5 an award of attorneys’ fees and costs for bringing this action.

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

17 17. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
18 her in the form of two components. One component of PLAINTIFF’s compensation was a base
19 hourly wage. The second component of PLAINTIFF’s compensation were non-discretionary
20 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
21 predefined performance requirements. PLAINTIFF met DEFENDANT’s predefined eligibility
22 performance requirements in various pay periods throughout her employment with
23 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay
24 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
25 DEFENDANT, PLAINTIFF also worked overtime and/or was paid meal premiums for meal
26 period violations by DEFENDANT, but DEFENDANT never included the incentive
27 compensation in PLAINTIFF’s regular rate of pay for the purposes of calculating what should
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1 have been PLAINTIFF's accurate overtime rate and/or accurate meal premium rate and thereby
2 underpaid PLAINTIFF for overtime worked and meal period violations throughout her
3 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
4 constituted wages within the meaning of the California Labor Code and thereby should have
5 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
6 unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal
7 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
8 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
9 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
10 he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
11 forfeited meal and rest breaks without the correct premium compensation and in accordance
12 with DEFENDANT's strict corporate policy and practice. DEFENDANT also provided
13 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of
14 overtime pay and payments for missed meal and rest periods for certain pay periods in violation
15 of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the
16 overtime compensation still owed to her or any penalty wages owed to him under Cal. Lab.
17 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
18 or value of \$75,000.

19
20 **JURISDICTION AND VENUE**

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

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

3
4 **THE CALIFORNIA CLASS**

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

14 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

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

3 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
7 calculate and record overtime compensation for overtime worked and meal premium pay for
8 meal period violations by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
10 this work and permitted or suffered to permit this work.

11 24. DEFENDANT has the legal burden to establish that each and every
12 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and meal
13 premium pay and to accurately calculate the “regular rate of pay” by including the incentive
14 compensation that PLAINTIFF and members of the CALIFORNIA CLASS were awarded by
15 DEFENDANT. DEFENDANT, however, as a matter of uniform and systematic policy and
16 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to
17 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member
18 is paid the applicable overtime rate for all overtime worked and the correct meal premium pay
19 for all meal period violations, so as to satisfy their burden. This common business practice
20 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
21 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
22 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

23 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
24 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
25 employee for all overtime worked at the applicable rate, as required by California Labor Code
26 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
27 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to
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1 compensate the employee for applicable meal premium rate, as required by California Labor
2 Code Section 512 and Section 226.7. At no time during the CALIFORNIA CLASS PERIOD
3 was the overtime compensation for any member of the CALIFORNIA CLASS properly
4 recalculated so as to include all earnings in the overtime compensation calculation as required
5 by California Labor Code §§ 510, *et seq.*

6 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
7 CLASS Members is impracticable.

8 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
9 California law by:

- 10 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
11 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
12 place company policies, practices and procedures that failed to pay all
13 wages due the CALIFORNIA CLASS for all overtime worked, and failed
14 to accurately record the applicable rates of all overtime worked by the
15 CALIFORNIA CLASS;
- 16 (b) Committing an act of unfair competition in violation of the California
17 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
18 unlawfully, unfairly, and/or deceptively having in place a company policy,
19 practice and procedure that failed to correctly calculate overtime
20 compensation due to PLAINTIFF and the members of the CALIFORNIA
21 CLASS;
- 22 (c) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
24 failing to provide mandatory meal and/or rest break premium pay to
25 PLAINTIFF and the CALIFORNIA CLASS members; and,
- 26 (d) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
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1 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
2 *seq.*, by failing to pay the correct federal overtime wages to the
3 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
4 required by the FLSA, and retaining the unpaid federal overtime to the
5 benefit of DEFENDANT.

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition of
10 their claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS will apply uniformly to every member of the CALIFORNIA
14 CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA CLASS, was subjected to the
18 uniform employment practices of DEFENDANT and was a non-exempt
19 employee paid on an hourly basis and paid additional non-discretionary
20 incentive wages who was subjected to the DEFENDANT’s practice and
21 policy which fails to pay the correct rate of overtime wages due to the
22 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
23 CLASS and thereby systematically underpays overtime compensation to
24 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
25 result of DEFENDANT’s employment practices. PLAINTIFF and the
26 members of the CALIFORNIA CLASS were and are similarly or
27 identically harmed by the same unlawful, deceptive, unfair and pervasive
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pattern of misconduct engaged in by DEFENDANT; and,

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

29. 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:
 - 1) 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,
 - 2) 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

1 as a whole in that DEFENDANT uniformly failed to pay all wages due.
2 Including the correct overtime rate, for all worked by the members of the
3 CALIFORNIA CLASS as required by law;

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

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

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

25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
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1 individual members of the CALIFORNIA CLASS, which
2 would establish incompatible standards of conduct for the
3 DEFENDANT; and/or,

4 B. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be
6 dispositive of the interests of the other members not parties
7 to the adjudication or substantially impair or impede their
8 ability to protect their interests;

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

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

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

22 (a) The questions of law and fact common to the CALIFORNIA CLASS
23 predominate over any question affecting only individual CALIFORNIA
24 CLASS Members because the DEFENDANT's employment practices are
25 uniform and systematically applied with respect to the CALIFORNIA
26 CLASS;

27 (b) A Class Action is superior to any other available method for the fair and
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1 efficient adjudication of the claims of the members of the CALIFORNIA
2 CLASS because in the context of employment litigation a substantial
3 number of individual CALIFORNIA CLASS Members will avoid
4 asserting their rights individually out of fear of retaliation or adverse
5 impact on their employment;

6 (c) The members of the CALIFORNIA CLASS are so numerous that it is
7 impractical to bring all members of the CALIFORNIA CLASS before the
8 Court;

9 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
10 able to obtain effective and economic legal redress unless the action is
11 maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations and
14 other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA CLASS;

17 (f) There is a community of interest in ensuring that the combined assets of
18 DEFENDANT are sufficient to adequately compensate the members of
19 the CALIFORNIA CLASS for the injuries sustained;

20 (g) DEFENDANT has acted or refused to act on grounds generally applicable
21 to the CALIFORNIA CLASS, thereby making final class-wide relief
22 appropriate with respect to the CALIFORNIA CLASS as a whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
24 the business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT as to the
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members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

32. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on 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 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

33. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime compensation for the overtime worked and failed to correctly calculate meal premium pay for meal period violations suffered by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

34. DEFENDANT maintains records from which the Court can ascertain and identify

1 by name and job title, each of DEFENDANT's employees who have been systematically,
2 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
3 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
4 any additional job titles of similarly situated employees when they have been identified.

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

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

- 9 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 overtime compensation to members of the CALIFORNIA LABOR SUB-
11 CLASS in violation of the California Labor Code and California
12 regulations and the applicable California Wage Order;
- 13 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
14 entitled to overtime compensation for overtime worked under the overtime
15 pay requirements of California law;
- 16 (c) Whether DEFENDANT failed to accurately record the applicable
17 overtime rates for all overtime worked PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS;
- 19 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS with legally
21 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 22 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS with accurate
24 itemized wage statements;
- 25 (f) Whether DEFENDANT has engaged in unfair competition by the
26 above-listed conduct;
- 27 (g) The proper measure of damages and penalties owed to the members of the
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CALIFORNIA LABOR SUB-CLASS; and,

(h) Whether DEFENDANT’s conduct was willful.

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

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

(b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all the correct pay for meal period violations and the legally required rest breaks;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee; and,

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

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

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

6 1) Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA LABOR SUB-CLASS which
8 would establish incompatible standards of conduct for the parties
9 opposing the CALIFORNIA LABOR SUB-CLASS; or,

10 2) Adjudication with respect to individual members of the
11 CALIFORNIA LABOR SUB-CLASS which would as a practical
12 matter be dispositive of interests of the other members not party to
13 the adjudication or substantially impair or impede their ability to
14 protect their interests.

15 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
16 or refused to act on grounds generally applicable to the CALIFORNIA
17 LABOR SUB-CLASS, making appropriate class-wide relief with respect
18 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
19 DEFENDANT uniformly failed to pay all wages due. Including the
20 correct overtime rate, for all overtime worked by the members of the
21 CALIFORNIA LABOR SUB-CLASS as required by law;

22 (c) Common questions of law and fact predominate as to the members of the
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
24 violations of California Law as listed above, and predominate over any
25 question affecting only individual CALIFORNIA LABOR SUB-CLASS
26 Members, and a Class Action is superior to other available methods for
27 the fair and efficient adjudication of the controversy, including
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consideration of:

- 1) 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;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. 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;
- 3) 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,
- 4) A class action is superior to other available methods for the fair

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

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

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

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

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

42. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

43. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

8 44. 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 204, 206.5, 226.7, 510, 512, 558, 1194, 1198, 1198.5, and Fair Labor
12 Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, for which this Court should issue
13 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
14 necessary to prevent and remedy the conduct held to constitute unfair competition, including
15 restitution of wages wrongfully withheld.

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

22 46. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
25 accurately to record the applicable rate of all overtime worked, and failed to provide the
26 required amount of overtime compensation due to a systematic miscalculation of the overtime
27 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
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1 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
2 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
3 including restitution of wages wrongfully withheld.

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

8 48. By the conduct alleged herein, DEFENDANT's practices were also unfair and
9 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
10 the correct meal period premiums for meal period violations and failed to provide mandatory
11 rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

17 50. PLAINTIFF further demands on behalf of herself and on behalf of each
18 CALIFORNIA CLASS member, one (1) hour at their regular rate of pay for each workday in
19 which an off duty paid rest period was not timely provided as required by law.

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

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

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

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

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

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26 **SECOND CAUSE OF ACTION**
27 **For Failure To Pay Overtime Compensation**

1 [Cal. Lab. Code §§ 204, 510, 1194 and 1198]

2 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
3 Defendants)

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

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

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

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

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

25 61. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
27 amount of overtime worked and correct applicable overtime rate for the amount of overtime
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1 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
4 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
5 all overtime worked.

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

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

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

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

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

5 67. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
7 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
8 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
10 to accurately record and pay using the applicable overtime rate as evidenced by
11 DEFENDANT's business records and witnessed by employees.

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

18 69. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
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,
22 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
23 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
24 applicable overtime rate.

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

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

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19 **THIRD CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Period Premium Pay**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

27 73. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
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1 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
2 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
3 Labor Code. In these pay periods where DEFENDANT failed to provide PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members with lawfully compliant meal periods,
5 DEFENDANT also failed to provide these workers with meal period premium pay at the correct
6 rate that included all of these employees' non-discretionary incentive wages earned in the same
7 pay period. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
8 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
9 duties for the legally required off-duty meal periods. As a result of their rigorous work
10 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often
11 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
12 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
13 Members with legally required meal premium pay at the correct rate is evidenced by
14 DEFENDANT's business records. As a result, PLAINTIFF and other members of the
15 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal break premium pay without in
16 accordance with DEFENDANT's strict corporate policy and practice.

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

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

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27 **FOURTH CAUSE OF ACTION**

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For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

76. PLAINTIFF, 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.

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

9 81. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

11 (1) gross wages earned,

12 (2) total hours worked by the employee, except for any employee whose compensation
13 is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
15 Commission,

16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,

18 (4) all deductions, provided that all deductions made on written orders of the employee
19 may be aggregated and shown as one item,

20 (5) net wages earned,

21 (6) the inclusive dates of the period for which the employee is paid,

22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,

26 (8) the name and address of the legal entity that is the employer, and

27 (9) all applicable hourly rates in effect during the pay period and the corresponding
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1 number of hours worked at each hourly rate by the employee.

2 82. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
3 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
4 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
5 CLASS with complete and accurate wage statements which failed to show, among other things,
6 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
7 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
8 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
9 furnish each of his or her employees with an accurate itemized wage statement in writing
10 showing, among other things, gross wages earned and all applicable hourly rates in effect during
11 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
12 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
13 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
14 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
15 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed under
15 contract, subcontract, partnership, station plan, or other agreement if the labor to
16 be paid for is performed personally by the person demanding payment.

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

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

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

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

89. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action

1 therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

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

2 B) Compensatory damages, according to proof at trial, including compensatory
3 damages for FLSA overtime compensation due PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
5 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
6 statutory rate;

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

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

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

19 3. On all claims:

20 A) An award of interest, including prejudgment interest at the legal rate;

21 B) Such other and further relief as the Court deems just and equitable; and,

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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 §119.5.

DATED: February 11, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani G. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: February 11, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiff