

**SUMMONS
(CITACION JUDICIAL)**

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

FRONTIER AUTO SALES, INC. dba FRONTIER TOYOTA, a California Corporation; and Does 1 through 50, Inclusive,

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

ALMA SALAZAR, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 12 2019

Sherri R. Carter, Executive Officer/Clerk
By: Tanya Herrera, Deputy

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.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

19STCV20382
CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, PLLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE:
(Fecha)

JUN 12 2019

Sherri R. Carter, Clerk

Clerk, by _____
(Secretario)

Tanya Herrera

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- 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):

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8 ATTORNEYS FOR PLAINTIFF ALMA SALAZAR

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 ALMA SALAZAR, an individual, on behalf of
herself, and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 vs.

15 FRONTIER AUTO SALES, INC. dba
FRONTIER TOYOTA, a California
16 Corporation; and Does 1 through 50, Inclusive,

17 Defendants.

CONFORMER COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 12 2019

Sherri R. Carter, Executive Officer/Clerk
By: Tanya Herrera, Deputy

Case No.

19STCV20382

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, 1194 & 1198;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
8. FAILURE TO PAY VACATION WAGES DUE; and

DEMAND FOR JURY TRIAL

By Fax

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

5 **THE PARTIES**

6 1. Defendant Frontier Auto Sales, Inc. dba Frontier Toyota (“DEFENDANT”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout the State of California.

9 2. DEFENDANT operates as a dealer of new and used automobiles. In addition to selling a
10 variety of used and new automobiles, DEFENDANT also provides parts and service through their repair
11 department.

12 3. PLAINTIFF was employed by DEFENDANT in California as an Assistant Sales
13 Manager from March of 2013 to May of 2019 and was at all times during her employment with
14 DEFENDANT entitled to be paid minimum and overtime wages and entitled to the legally required off-
15 duty meal and rest periods. PLAINTIFF from time to time was unable to take off duty meal and rest
16 periods as a result of DEFENDANT’s work obligations.

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

23 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS
24 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
25 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed
26 to lawfully compensate these employees for all their unpaid wages and all their missed meal and rest
27 periods. DEFENDANT’s uniform policy and practice alleged herein was an unlawful, unfair and
28 deceptive business practice whereby DEFENDANT retained and continues to retain wages due

1 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members
2 of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,
3 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
4 economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate
5 legal and equitable relief.

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

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

21 **THE CONDUCT**

22 8. To successfully compete against the other automobile dealerships, DEFENDANT
23 substantially reduced its labor costs by placing the labor burden on a smaller number of employees that
24 DEFENDANT classified as exempt from overtime wages. The goal of overtime laws includes
25 expanding employment throughout the workforce by putting financial pressure on the employer and
26 nurturing a stout job market, as well as the important public policy goal of protecting employees in a
27 relatively weak bargaining position against the unfair scheme of uncompensated overtime work. An
28 employer's obligation to pay its employees wages is more than a matter of private concern between the

1 parties. That obligation is founded on a compelling public policy judgment that employees are entitled
2 to work a livable number of hours at a livable wage. In addition, statutes and regulations that compel
3 employers to pay overtime relate to fundamental issues of social welfare worthy of protection. The
4 requirement to pay overtime wages extends beyond the benefits individual workers receive because
5 overtime wages discourage employers from concentrating work in a few overburdened hands and
6 encourage employers to instead hire additional employees. Especially in today's economic climate, the
7 importance of spreading available work to reduce unemployment cannot be overestimated.

8 9. To perform their finite set of tasks, the sales persons did not engage in a supervisory role
9 given the constraints placed upon them by company policy. Sales persons did not determine what work
10 was to be done by other employees or in what time frame. Furthermore, the sales persons also did not
11 have a distinct role in training other employees or determining what training they were to receive.
12 Lastly, PLAINTIFF and other sales persons did not have the authority to hire, fire, or promote
13 employees, determine their pay rates or benefits, or give raises as they were unable to make
14 employment-related, personnel decisions. Consequently, PLAINTIFF and the other sales persons did
15 not have the authority to decide whether or not an employee should be disciplined for an infraction.
16 Disciplinary decisions were made by the human resources department or dictated by company policies.
17 Overall, PLAINTIFF's and other sales persons recommendations were given little, if any, weight on all
18 the above issues. As a result, PLAINTIFF and the other sales persons were engaged in a type of work
19 that required no exercise of independent judgment or discretion as to any matter of significance.

20 10. For purposes of exempting inside or commissioned sales persons from the requirements
21 of overtime, California Code of Regulations Section 11040(3)(A) provides that the provisions of
22 subsections (A), (B) and (C) of the Wage Order shall not apply to any employee whose earnings exceed
23 one and one-half (1 ½) times the California minimum wage if more than half of the employee's
24 compensation represents commissions. PLAINTIFF and the other members of the CALIFORNIA
25 CLASS were not paid according to the structure above, and were, therefore, not exempt from the
26 requirement that they be paid overtime. Further, employees who are paid pursuant to the pay structure
27 outlined by Cal. Code of Regs. § 11040(3) would only be exempt from the provisions of subsections
28 (A), (B) and (C), which govern the payment of overtime. Nothing in this limited exemption, however,

1 relieves an employer from the following obligations of:

2 (a) California Code of Regulations § 11040(4), which requires employers to pay at
3 least minimum wage to employees;

4 (b) California Code of Regulations § 11040(7), which requires employers to provide
5 accurate itemized wage statements to employees;

6 (c) California Code of Regulations § 11040(11), which requires employers to provide
7 meal periods to employees; or

8 (d) California Code of Regulations § 11040(12), which requires employers to provide
9 rest periods to employees.

10 11. The work schedule for PLAINTIFF and other CALIFORNIA CLASS Members was set
11 by DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members from time to time worked
12 in excess of eight (8) hours in a workday and/or more than forty (40) hours in any given workweek.

13 12. PLAINTIFF and the other CALIFORNIA CLASS Members were not provided with
14 overtime compensation and other benefits required by law as a result of being classified as "exempt" by
15 DEFENDANT.

16 13. DEFENDANT, as a matter of law, has the burden of proving that (a) employees were
17 properly classified as exempt and that (b) DEFENDANT otherwise complied with applicable laws.

18 14. As a matter of company policy, practice, and procedure, DEFENDANT has uniformly,
19 unlawfully, unfairly and/or deceptively classified every sales person as exempt from overtime pay and
20 other related benefits, failed to pay the required overtime compensation and otherwise failed to comply
21 with all applicable labor laws with respect to these sales persons.

22 15. Although PLAINTIFF and the other sales persons spent the vast majority of their time
23 performing these non-exempt tasks, DEFENDANT instituted a blanket classification policy, practice
24 and procedure by which all of these sales persons were classified as exempt from overtime
25 compensation. By reason of this uniform exemption practice, policy and procedure applicable to
26 PLAINTIFF and the other sales persons who performed these non-exempt tasks, DEFENDANT
27 committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus.
28 & Prof. Code §§ 17200, et seq. (the "UCL"), by engaging in a uniform company-wide policy, practice

1 and procedure which failed to properly classify PLAINTIFF and the other sales persons and thereby
2 failed to pay them overtime wages for documented overtime worked. The proper classification of these
3 employees was DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
4 obligation to meet this burden, DEFENDANT failed to pay all required overtime compensation for work
5 performed by the members of the CALIFORNIA CLASS and violated the California Labor Code and
6 regulations promulgated thereunder as herein alleged.

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

18 17. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
19 Members with a second off-duty meal period each workday in which these employees were required by
20 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to provide
21 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced
22 by DEFENDANT's business records which contain no record of these breaks.

23 18. PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in
24 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees
25 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
26 to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
27 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes
28 for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS

1 Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
3 proper rest periods by DEFENDANT and DEFENDANT's managers.

4 19. From time to time, when DEFENDANT did not accurately record PLAINTIFF's and
5 other CALIFORNIA CLASS Members' missed meal and rest breaks and also failed to pay the proper
6 minimum and overtime wages, the wage statements issued to PLAINTIFF and other CALIFORNIA
7 CLASS Members by DEFENDANT violated California law, and in particular, Labor Code Section
8 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
9 PLAINTIFF an itemized wage statement that listed all the requirements under California Labor Code
10 226 et seq.

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

20 21. Specifically as to PLAINTIFF, she worked as an Assistant Sales Manager for
21 DEFENDANT and was classified as an employee exempt from receiving overtime pay from February
22 of 2017 to April of 2017. During the CALIFORNIA CLASS PERIOD, PLAINTIFF as an Assistant
23 Sales Manager was classified by DEFENDANT as exempt from overtime pay and from time to time
24 worked in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek, but as
25 a result of DEFENDANT's misclassification of PLAINTIFF as exempt from the applicable California
26 Labor Code provisions, PLAINTIFF was not compensated by DEFENDANT for her overtime worked
27 at the applicable overtime rates. Additionally, DEFENDANT failed to provide all the legally required
28 off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor Code.

1 DEFENDANT failed to compensate PLAINTIFF for her missed meal and rest breaks. From time to
2 time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods, and
3 failing to pay proper minimum and overtime wages due for all overtime worked, the wage statements
4 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section
5 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to him and all premiums
6 due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
7 owed to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF
8 individually does not exceed the sum or value of \$75,000.

9 **JURISDICTION AND VENUE**

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

14 23. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
15 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA
18 CLASS and CALIFORNIA LABOR SUB-CLASS.

19 **THE CALIFORNIA CLASS**

20 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action,
22 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
23 are or previously were employed by DEFENDANT in California as sales persons (the "CALIFORNIA
24 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
25 and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
26 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
27 dollars (\$5,000,000.00).

28 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS

1 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

2 26. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
3 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
4 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a
5 practice whereby DEFENDANT systematically failed to correctly record missed meal and rest breaks
6 and all time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
7 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
8 or suffered to permit this work.

9 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
10 CLASS Member was paid the correct wages for all time worked. The DEFENDANT, however, as a
11 matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA
12 CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every
13 CALIFORNIA CLASS Member is paid for all missed meal and rest breaks, so as to satisfy their burden.
14 This common business practice applicable to each and every CALIFORNIA CLASS Member can be
15 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
16 Professions Code §§ 17200, et seq. (the “UCL”) as causation, damages, and reliance are not elements
17 of this claim.

18 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for any
19 member of the CALIFORNIA CLASS properly recalculated so as to compensate the employee for all
20 minimum and overtime wages due and missed meal and rest premiums owed, as required by California
21 Labor Code.

22 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
23 Members is impracticable.

24 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
25 California law by:

26 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
27 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company
28 policies, practices and procedures that uniformly misclassified PLAINTIFF and the members of the

1 CALIFORNIA CLASS as exempt;

2 (b) Committing an act of unfair competition in violation of the UCL, by unlawfully,
3 unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that
4 accurately determined the amount of working time spent by PLAINTIFF and the members of the
5 CALIFORNIA CLASS performing non-exempt labor;

6 (c) Committing an act of unfair competition in violation of the UCL, by having in
7 place a company policy, practice and procedure that failed to reclassify as non-exempt those members
8 of the CALIFORNIA CLASS whose actual tasks were comprised of non-exempt job functions; and,

9 (d) Committing an act of unfair competition in violation of the UCL, by violating Cal.
10 Lab. Code §§ 510, et seq., by failing to pay the correct overtime pay to the PLAINTIFF and the members
11 of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the unpaid
12 overtime to the benefit of DEFENDANT;

13 (e) Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, et seq., by failing to provide PLAINTIFF and the
15 other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30)
16 minute meal breaks and the legally required off duty rest breaks; and,

17 (f) Committing an act of unfair competition in violation of the UCL, by violating Cal.
18 Lab. Code §§ 1194, 1197 & 1197.1, by unlawfully, unfairly and deceptively having in place company
19 policies, practices and procedures that uniformly denied PLAINTIFF and the members of the
20 CALIFORNIA CLASS the correct minimum wages and otherwise violated applicable law.

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

23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
25 parties 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 CLASS will apply uniformly to every
28 member of the CALIFORNIA CLASS;

1 (c) The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA
3 CLASS, was a sales person who was subjected to the DEFENDANT's deceptive practice and policy
4 which failed to pay minimum and overtime wages due and failed to provide the legally required meal
5 and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to
6 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of
7 DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS
8 were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive
9 pattern of misconduct engaged in by DEFENDANT; and,

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

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

18 (a) Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions by individual members
20 of the CALIFORNIA CLASS will create the risk of:

21 1) Inconsistent or varying adjudications with respect to individual members
22 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
23 opposing the CALIFORNIA CLASS; and/or,

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

27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
28 grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with

1 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages
2 due to members of the CALIFORNIA CLASS as required by law;

3 1) 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 because through this claim
5 PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute
6 unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may
7 be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

13 1) The interests of the members of the CALIFORNIA CLASS in individually
14 controlling the prosecution or defense of separate actions in that the substantial expense of individual
15 actions will be avoided to recover the relatively small amount of economic losses sustained by the
16 individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of
17 individual prosecution of this litigation;

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

20 A. Inconsistent or varying adjudications with respect to individual
21 members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for
22 the DEFENDANT; and/or,

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

26 3) In the context of wage litigation because a substantial number of individual
27 CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by
28 DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a

1 subsequent employer, the Class Action is the only means to assert their claims through a representative;
2 and,

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

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

9 (a) The questions of law and fact common to the CALIFORNIA CLASS predominate
10 over any question affecting only individual CALIFORNIA CLASS Members because the
11 DEFENDANT's employment practices are uniform and systematically applied with respect to the
12 CALIFORNIA CLASS;

13 (b) A Class Action is superior to any other available method for the fair and efficient
14 adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of
15 employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid
16 asserting their rights individually out 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) PLAINTIFF, 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 Class Action;

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

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

28 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the

1 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
2 CALIFORNIA CLASS as a whole;

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

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

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

13 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
2 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
3 CLASS PERIOD should be adjusted accordingly.

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

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

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

13 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay all
14 minimum and overtime wage compensation due to members of the CALIFORNIA LABOR SUB-
15 CLASS in violation of the California Labor Code and California regulations and the applicable
16 California Wage Order;

17 (b) Whether DEFENDANT failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA LABOR SUB-CLASS with the legally required meal and rest periods;

19 (c) Whether DEFENDANT failed to provide PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

21 (d) Whether DEFENDANT has engaged in unfair competition by the above listed
22 conduct;

23 (e) The proper measure of damages and penalties owed to the members of the
24 CALIFORNIA LABOR SUB-CLASS; and

25 (f) Whether DEFENDANT's conduct was willful.

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

28 (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the

1 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing
2 showing the corresponding correct amount of wages earned by the employee, the total amount of hours
3 worked, and the correct legal entity that was their employer;

4 (b) Violating Cal. Lab. Code §§ 510, et seq., by misclassifying and thereby failing to
5 pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
6 pay for a workday longer than eight (8) hours and a workweek longer than forty (40) hours, for which
7 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

8 (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately
9 pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct
10 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

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

27 (c) The claims of the representative PLAINTIFF are typical of the claims of each
28 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the

1 CALIFORNIA LABOR SUB-CLASS, was an sales person who was subjected to the DEFENDANT's
2 practice and policy as described herein. PLAINTIFF sustained economic injury as a result of
3 DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR
4 SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and
5 pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
24 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
25 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
26 that DEFENDANT uniformly fails to pay all wages due, including the correct wages for all time worked
27 by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

28 (c) Common questions of law and fact predominate as to the members of the

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

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

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

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

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

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

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

28 43. This Court should permit this action to be maintained as a Class Action pursuant to Cal.

1 Code of Civ. Proc. § 382 because:

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

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

10 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
11 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

12 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
13 not be able to obtain effective and economic legal redress unless the action is maintained as a Class
14 Action;

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

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

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

25 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
26 ascertainable from the business records of DEFENDANT; and,

27 (i) Class treatment provides manageable judicial treatment calculated to bring a
28 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the

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

2 **FIRST CAUSE OF ACTION**

3 For Unlawful Business Practices

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

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

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

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

10 46. 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 as
13 follows:

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

22 Cal. Bus. & Prof. Code § 17203.

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

1 wrongfully withheld.

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

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

15 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
16 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of
17 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

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

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

26 53. PLAINTIFF further demands on behalf of herself and each member of the CALIFORNIA
27 LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest period was not given and
28 a premium was not timely provided as required by law.

1 For Failure to Pay Minimum Wages

2 [Cal. Lab. Code §§ 1194, 1197 and 1197.1]

3 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

4 and Against All Defendants)

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

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

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

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

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

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

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

28 66. In committing these violations of the California Labor Code, DEFENDANT inaccurately

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

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

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

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 For Failure To Pay Overtime Compensation

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

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

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

20 74. Cal. Lab. Code § 510 states in relevant part:

21 Eight hours of labor constitutes a day's work. Any work in excess of eight
22 hours in one workday and any work in excess of 40 hours in any one
23 workweek and the first eight hours worked on the seventh day of work in
24 any one workweek shall be compensated at the rate of no less than one and
25 one-half times the regular rate of pay for an employee. Any work in excess
26 of 12 hours in one day shall be compensated at the rate of no less than twice
27 the regular rate of pay for an employee. In addition, any work in excess of
28 eight hours on any seventh day of a workweek shall be compensated at the

1 rate of no less than twice the regular rate of pay of an employee.

2 75. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is
3 entitled to one day's rest therefrom in seven."

4 76. Cal. Lab. Code § 552 states that, "No employer of labor shall cause her employees to
5 work more than six days in seven."

6 77. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of
7 compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular
8 hourly rate shall be 1/40th of the employee's weekly salary."

9 78. Cal. Lab. Code § 1194 states:

10 Notwithstanding any agreement to work for a lesser wage, any employee
11 receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil
13 action the unpaid balance of the full amount of this minimum wage or
14 overtime compensation, including interest thereon, reasonable attorney's
15 fees, and costs of suit.

16 79. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
17 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
18 conditions of labor for employees. The employment of any employee for longer hours than those fixed
19 by the order or under conditions of labor prohibited by the order is unlawful."

20 80. DEFENDANT has intentionally and uniformly designated certain employees as "exempt"
21 employees, by their job title alone and without regard to DEFENDANT's realistic expectations and
22 actual overall requirements of the job. This was done in an illegal attempt to avoid payment of overtime
23 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission
24 requirements.

25 81. For an employee to be exempt as a bona fide "commissioned salesperson," all the
26 following criteria must be met and DEFENDANT has the burden of proving that:

27 (a) The employee's primary duty must be making sales as defined to include any sale,
28 exchange, contract to sell, consignment sale, shipment for sale, or other disposition; or

1 (b) The employee must obtain orders or contracts for services or for the use of
2 facilities for which a consideration will be paid by the client or customer; and,

3 (c) The employee's earnings must exceed one and one-half (1 ½) times the minimum
4 wage; and,

5 (d) The employee must earn more than half of their compensation from bona fide
6 sales commissions; and,

7 (e) The employee must be primarily engaged in duties which meet the test of
8 exemption.

9 No member of the CALIFORNIA LABOR SUBCLASS was or is an inside salesperson
10 or commissioned salesperson because they all fail to meet the requirements of being a "commissioned
11 salesperson" within the meaning of the applicable Wage Order.

12 82. For an employee to be exempt as a bona fide "outside salesperson," all the following
13 criteria must be met and DEFENDANT has the burden of proving that:

14 (a) The employee's primary duty must be making sales as defined to include any sale,
15 exchange, contract to sell, consignment sale, shipment for sale, or other disposition; or

16 (b) The employee must obtain orders or contracts for services or for the use of
17 facilities for which a consideration will be paid by the client or customer; and,

18 (c) The employee must customarily and regularly spend more than half the work time
19 away from the employer's place of business engaged in sales-related activity; and,

20 (d) The employee must be primarily engaged in duties which meet the test of
21 exemption.

22 No member of the CALIFORNIA LABOR SUBCLASS was or is an outside salesperson because
23 they all fail to meet the requirements of being an "outside salesperson" within the meaning of the
24 applicable Wage Order.

25 83. For an employee to be exempt as a bona fide "executive," all the following
26 criteria must be met and DEFENDANT has the burden of proving that:

27 (a) The employee's primary duty must be management of the enterprise, or of a
28 customarily recognized department or subdivision; and,

1 (b) The employee must customarily and regularly direct the work of at least two (2)
2 or more other employees; and,

3 (c) The employee must have the authority to hire and fire, or to command particularly
4 serious attention to her or her recommendations on such actions affecting other employees; and,

5 (d) The employee must customarily and regularly exercise discretion and independent
6 judgment; and,

7 (e) The employee must be primarily engaged in duties which meet the test of
8 exemption.

9 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all
10 fail to meet the requirements of being an "executive" within the meaning of the applicable Wage Order.

11 84. For an employee to be exempt as a bona fide "administrator," all of the following criteria
12 must be met and DEFENDANT has the burden of proving that:

13 (a) The employee must perform office or non-manual work directly related to
14 management policies or general business operation of the employer; and,

15 (b) The employee must customarily and regularly exercise discretion and independent
16 judgment; and,

17 (c) The employee must regularly and directly assist a proprietor or an exempt
18 administrator; or,

19 (d) The employee must perform, under only general supervision, work requiring
20 special training, experience, or knowledge; or,

21 (e) The employee must execute special assignments and tasks under only general
22 supervision; and,

23 (f) The employee must be primarily engaged in duties which meet the test of
24 exemption.

25 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because they
26 all fail to meet the requirements for being an "administrator" under the applicable Wage Order.

27 85. The Industrial Welfare Commission, in Wage Order 4-2001, at section (1)(A)(3)(h), and
28 Labor Code § 515 also set forth the requirements which must be complied with to place an employee in

1 the "professional" exempt category. For an employee to be exempt as a bona fide "professional," all
2 the following criteria must be met and DEFENDANT has the burden of proving that:

3 (a) The employee is primarily engaged in an occupation commonly recognized as a
4 learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means
5 an employee who is primarily engaged in the performance of:

6 1) Work requiring knowledge of an advanced type in a field or science or
7 learning customarily acquired by a prolonged course of specialized intellectual instruction and study,
8 as distinguished from a general academic education and from an apprenticeship, and from training in
9 the performance of routine mental, manual, or physical processes, or work that is an essential part or
10 necessarily incident to any of the above work; or,

11 2) Work that is original and creative in character in a recognized field of
12 artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of
13 the employee or work that is an essential part of or incident to any of the above work; and,

14 3) Whose work is predominately intellectual and varied in character (as
15 opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be
16 standardized in relation to a given period of time.

17 (b) The employee must customarily and regularly exercise discretion and independent
18 judgment; and,

19 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
20 state minimum wage for full-time employment.

21 86. No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because
22 they all fail to meet the requirements of being a "professional" within the meaning of the applicable
23 Wage Order. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not
24 fit the definition of an exempt executive, administrative, or professional employee because:

25
26 (a) They did not work as executives or administrators; and,

27 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
28 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet all the applicable

1 requirements to work under the professional exemption for the reasons set forth above in this Complaint.

2 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, from time to time worked more than eight (8)
4 hours in a workday and more than forty (40) hours in a workweek.

5 88. DEFENDANT failed to pay the PLAINTIFF, and the other members of the
6 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they have worked in excess
7 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even though
8 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, were from time
9 to time required to work, and did in fact work, overtime.

10 89. By virtue of DEFENDANT's unlawful failure to pay additional compensation to
11 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their overtime,
12 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, have suffered, and
13 will continue to suffer, an economic injury in amounts which are presently unknown to them and which
14 will be ascertained according to proof at trial.

15 90. DEFENDANT knew or should have known that PLAINTIFF, and the other members of
16 the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt and DEFENDANT
17 systematically elected, either through intentional malfeasance or gross nonfeasance, not to pay them for
18 their overtime labor as a matter of uniform corporate policy, practice and procedure.

19 91. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
20 CLASS, request recovery of overtime compensation according to proof, interest, costs, as well as the
21 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the Cal. Lab. Code
22 and/or other statutes. To the extent overtime compensation is determined to be owed to members of the
23 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, these employees would
24 also be entitled to waiting time penalties under Labor Code § 203, which penalties are sought herein.
25 Further, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are
26 entitled to seek and recover statutory costs.

27 92. In performing the acts and practices herein alleged in violation of labor laws
28 and refusing to provide the requisite overtime compensation, DEFENDANT acted and continues to act

1 intentionally, oppressively, and maliciously toward PLAINTIFF, and toward the other members of the
2 CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal rights
4 and otherwise causing them injury in order to increase corporate profits at the expense of the
5 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS.

6 **FOURTH CAUSE OF ACTION**

7 For Failure to Provide Required Meal Periods

8 [Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

1 not provided.

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

5 **FIFTH CAUSE OF ACTION**

6 For Failure to Provide Required Rest Periods

7 [Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

27 100. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek

1 all wages earned and due, interest, penalties, expenses and costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 For Failure to Provide Accurate Itemized Statements

4 [Cal. Lab. Code § 226]

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

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

9 102. Cal. Labor Code § 226 provides that an employer must furnish employees with an
10 “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 is
13 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
14 515 or any applicable order of the Industrial Welfare Commission,

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

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

19 (5) net wages earned,

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

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

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

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

27 103. When DEFENDANT did not accurately record PLAINTIFF’s and other CALIFORNIA
28 CLASS Members’ minimum and overtime wages due and missed meal breaks and unpaid rest breaks,

1 DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage
2 statement in writing that properly and accurately itemized all missed meal and rest periods incurred by
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed
4 to set forth the correct wages earned by the employees. Aside, from the violations listed above in this
5 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
6 requirements under California Labor Code 226 et seq.

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

18 **SEVENTH CAUSE OF ACTION**

19 For Failure to Timely Pay Wages When Due

20 [Cal. Lab. Code §§ 201, 202, 203]

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

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

25 106. Cal. Lab. Code § 200 provides, in relevant part, that:

26 As used in this article:(a) "Wages" includes all amounts for labor
27 performed by employees of every description, whether the amount is fixed
28 or ascertained by the standard of time, task, piece, Commission basis, or

1 other method of calculation. (b) "Labor" includes labor, work, or service
2 whether rendered or performed under contract, subcontract, partnership,
3 station plan, or other agreement if the labor to be paid for is performed
4 personally by the person demanding payment.

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

7 108. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

20 110. Cal. Lab. Code § 203 provides, in relevant part, that:

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

27 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
28 Members terminated and DEFENDANT has not tendered payment of all wages owed as required by

1 law.

2 112. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
3 the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have unpaid
4 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally
5 required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not
6 timely paying all wages due at time of termination for all employees who terminated employment during
7 the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed by law.

8 **EIGHTH CAUSE OF ACTION**

9 **For Failure to Pay Vacation Wages**

10 **By Plaintiffs and Vacation Subclass Members Against Defendant**

11
12 113. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein, except for paragraph 2.

14 114. At all relevant times, California Labor Code §227.3 provides for the following:

15
16 Unless otherwise provided by a collective-bargaining agreement,
17 whenever a contract of employment or employer policy provides for paid vacations,
18 and an employee is terminated without having taken off his vested vacation time,
19 all vested vacation shall be paid to him as wages at his final rate in accordance with
20 such contract of employment or employer policy respecting eligibility or time
21 served; provided, however, that an employment contract or employer policy shall
22 not provide for forfeiture of vested vacation time upon termination. The Labor
23 Commissioner or a designated representative, in the resolution of any dispute with
24 regard to vested vacation time, shall apply the principles of equity and fairness.

25 115. At all times relevant, including at times throughout the four-year period preceding
26 the filing of this complaint, Plaintiffs, and upon information and belief, Vacation Subclass Members
27 were subject to an employer policy and/or contract of employment that provided for paid vacations not
28 otherwise provided by a collective-bargaining agreement. Upon Plaintiffs and Vacation Subclass
Members' separation of employment, they had not used all of their vested vacation and thus their unused,
vested vacation was required to have been paid at their final rate upon separation of employment. As a
result of the miscalculation, Defendants violated Labor Code §227.3.

116. Plaintiffs seeks, on their behalf and on behalf of the Vacation Subclass, all

1 damages and remedies available under California Labor Code §227.3, including payment of the vacation
2 wages at the final rate.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

9 B) An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

11 C) An order requiring DEFENDANT to pay all sums unlawfully withheld from
12 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

13 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
14 for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other
15 members of the CALIFORNIA CLASS.

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

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

20 B) Compensatory damages, according to proof at trial, including compensatory
21 damages for overtime wage compensation due PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
23 PERIOD plus interest thereon at the statutory rate;

24 C) Meal and rest period compensation pursuant to California Labor Code Section
25 226.7 and the applicable IWC Wage Order;

26 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
28 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty

1 of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

2 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
3 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

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

7 3. On all claims:


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

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

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
11 including, but not limited to, pursuant to Labor Code §226, and/or §1194.

12
13 Dated: June 12 2019

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.


14
15 By: 
16 Shani O. Zakay
17 Attorneys for Plaintiff

18
19
20 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: June 12, 2019

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

24
25 By: 
26 Shani O. Zakay
27 Attorneys for Plaintiff