

**SUMMONS ORIGINAL**  
**(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**FILED**  
Superior Court of California  
County of Los Angeles  
  
MAR 02 2021  
  
Sherri R. Carter, Executive Officer/Clerk  
By Rita Nazaryan, Deputy  
Rita Nazaryan

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

GUIDED DISCOVERIES, INC. a California corporation; and DOES 1-50, Inclusive,

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

CRAIG MELLINGER, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

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

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

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

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

CASE NUMBER (Número del caso) **21STCV08418**

Los Angeles Superior Court - Stanley Mosk Courthouse  
111 N. Hill Street, Los Angeles, CA 90012

Shani O. Zakay, Esq. (SBN: 277924)

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

DATE: MAR 02 2021 Clerk, by SHERRI R. CARTER, Deputy  
(Fecha) (Secretario) (Adjunto)

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



**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):
- 3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- 4.  by personal delivery on (date)

VIA FAX

**JCL LAW FIRM, APC**

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Attorneys for Plaintiff

**FILE ORIGINAL**  
Superior Court of California  
County of Los Angeles

MAR 02 2021

Sherri K. Carter, Executive Officer/Clerk

By Rita Nazaryan, Deputy  
Rita Nazaryan

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

CRAIG MELLINGER, an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

GUIDED DISCOVERIES, INC. a California  
corporation; and DOES 1-50, Inclusive,

Defendant.

Case No: **21STCV08418**

**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 and 1197;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

VIA FAX

1 Plaintiff Craig Mellinger (“PLAINTIFF”), an individual, on behalf of himself and all other similarly  
2 situated current and former employees, allege on information and belief, except for their own acts  
3 and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant GUIDED DISCOVERIES, INC. (“DEFENDANT”) is a California  
6 corporation that at all relevant times mentioned herein conducted and continues to conduct  
7 substantial and regular business throughout California, including the County of Los Angeles.

8 2. DEFENDANT is an educational non-profit specializing in school programs and  
9 summer camps in Southern California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
11 employee entitled to minimum wages and overtime pay and meal and rest periods from January  
12 2016 to August 2020.

13 4. PLAINTIFF was at all times relevant mentioned herein classified by  
14 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and entitled  
15 to meal and rest breaks.. The amount in controversy for PLAINTIFF individually does not exceed  
16 the sum or value of \$75,000.

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

24 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’ uniform policy and practice  
27 which failed to lawfully compensate these employees for all their time worked, including  
28 overtime. DEFENDANT’ uniform policy and practice alleged herein is an unlawful, unfair and  
deceptive business practice whereby DEFENDANT retained and continue to retain wages due to

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' past and current  
5 unlawful conduct, and all other appropriate legal and equitable relief.

6 7. The true names and capacities, whether individual, corporate, subsidiary,  
7 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently  
8 unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names  
9 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to  
10 allege 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 DEFENDANT 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 caused  
14 the injuries and damages hereinafter alleged

15 8. The agents, servants and/or employees of the DEFENDANT and each of them  
16 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority  
17 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the  
18 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.  
19 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and  
20 all DEFENDANT 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 DEFENDANT' agents, servants and/or employees

23 **THE CONDUCT**

24 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
25 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
26 worked, meaning the time during which an employee is subject to the control of an employer,  
27 including all the time the employee is suffered or permitted to work. From time to time,  
28 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without

1 paying them for all the time they were under DEFENDANT’ control. Specifically,  
2 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be  
3 PLAINTIFFS’ off-duty meal break. PLAINTIFFS were often interrupted by work assignments.  
4 Indeed there were many days where PLAINTIFF did not even receive a partial lunch. Moreover,  
5 PLAINTIFF, from time to time, was not compensated for work he performed while “on-call”  
6 responding to telephone calls from supervisors, co-workers, and clients. In effect, it was  
7 DEFENDANT’ policy to *only* pay PLAINTIFF if a telephone call from a someone resulted in the  
8 PLAINTIFF having to be dispatched and perform work physically. As a result, the PLAINTIFF  
9 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and  
10 overtime compensation by working without their time being accurately recorded and without  
11 compensation at the applicable minimum wage and overtime rates. DEFENDANT’ uniform  
12 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all  
13 time worked is evidenced by DEFENDANT’ business records.

14 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continue  
15 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
16 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately  
17 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA  
18 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,  
19 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for  
20 working overtime without compensation at the correct overtime rates. DEFENDANT’ uniform  
21 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime  
22 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT’  
23 business records.

24 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
25 CLASS Members were also from time to time unable to take off duty meal breaks and were not  
26 fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members  
27 were required to perform work as ordered by DEFENDANT for more than five (5) hours during  
28 a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide

1 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period each  
2 workday in which these employees were required by DEFENDANT to work ten (10) hours of  
3 work. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks  
4 without additional compensation and in accordance with DEFENDANT' strict corporate policy  
5 and practice

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

16 13. When PLAINTIFF and other CALIFORNIA CLASS Members worked off the  
17 clock and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and  
18 the other members of the CALIFORNIA CLASS with complete and accurate wage statements  
19 which failed to show, among other things, the correct wages and time worked, including, work  
20 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and  
21 the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that  
22 every employer shall furnish each of his or her employees with an accurate itemized wage  
23 statement in writing showing, among other things, gross wages earned and all applicable hourly  
24 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
25 rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to  
26 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
27 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other  
28

1 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
2 226.

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

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

26 16. DEFENDANT as a matter of corporate policy, practice and procedure,  
27 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and  
28 the other CALIFORNIA CLASS Members for required business expenses incurred by

1 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
2 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
3 are required to indemnify employees for all expenses incurred in the course and scope of their  
4 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
6 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
7 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
8 to be unlawful."

9         17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS  
10 Members, as a business expense, were required by DEFENDANT to use personal cellular phones  
11 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not  
12 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal  
13 cellular phones for DEFENDANT' benefit. In order to make deliveries for DEFENDANT,  
14 PLAINTIFF and other CALIFORNIA CLASS Members were required to call customers or other  
15 employees and as such it is mandatory to have a cell phone. As a result, in the course of their  
16 employment with DEFENDANT, PLAINTIFF and other Members of the CALIFORNIA CLASS  
17 incurred unreimbursed business expenses which included, but were not limited to, costs related  
18 to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.  
19 Further, PLAINTIFF and other CALIFORNIA CLASS Members were also not legally  
20 reimbursed or indemnified by DEFENDANT for the cost associated with using their personal  
21 vehicles while performing for DEFENDANT. As a result, in the course of their employment with  
22 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
23 unreimbursed business expenses which included, but were not limited to, costs related to travel,  
24 all on behalf of and for the benefit of DEFENDANT. The amount in controversy for PLAINTIFF  
25 individually does not exceed the sum or value of \$75,000.



1 **JURISDICTION AND VENUE**

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

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

11 **THE CALIFORNIA CLASS**

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

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

24 22. The California Legislature has commanded that "all wages... ..earned by any  
25 person in any employment are due and payable twice during each calendar month, on days  
26 designated in advance by the employer as the regular paydays", and further that "[a]ny work in  
27 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .  
28 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay

1 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),  
2 however, is statutorily authorized to “establish exemptions from the requirement that an overtime  
3 rate of compensation be paid... ..for executive, administrative, and professional employees,  
4 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the  
5 exemption, [and] customarily and regularly exercises discretion and independent judgment in  
6 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFFS nor the other members  
7 of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS qualify for  
8 exemption from the above requirements.

9         23.     DEFENDANT, as a matter of company policy, practice and procedure, and in  
10 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
11 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
12 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly record,  
13 and pay wages, including overtime compensation for time worked by PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this  
15 work, required employees to perform this work and permitted or suffered to permit this work.

16         24.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
17 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
18 employee for all overtime worked at the applicable rate, as required by California Labor Code §§  
19 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the overtime  
20 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to  
21 include all earnings in the overtime compensation calculation as required by California Labor  
22 Code §§ 510, *et seq.*

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

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

- 27             a.     Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
28                 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company

1 policies, practices and procedures that failed to pay all wages due the  
2 CALIFORNIA CLASS for all time worked, including overtime, and failed to  
3 accurately record the applicable rates of all overtime worked by the CALIFORNIA  
4 CLASS;

5 b. Committing an act of unfair competition in violation of the California Unfair  
6 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
7 unfairly, and/or deceptively having in place a company policy, practice and  
8 procedure that failed to correctly calculate overtime compensation due to  
9 PLAINTIFFS and the members of the CALIFORNIA CLASS;

10 c. Committing an act of unfair competition in violation of the California Unfair  
11 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
12 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA  
13 CLASS members; and

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

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

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

22 c. The claims of the representative PLAINTIFF are typical of the claims of each  
23 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
24 the CALIFORNIA CLASS, was subjected to the uniform employment practices  
25 of DEFENDANT and was a non-exempt employee paid on an hourly basis who  
26 was subjected to the DEFENDANT' practice and policy which failed to pay all  
27 wages due to the CALIFORNIA CLASS for all time worked by the CALIFORNIA  
28 CLASS and thereby systematically under pays overtime compensation to the

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

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

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

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

1 DEFENDANT uniformly failed to pay all wages due, including the correct  
2 overtime rate, for all time worked by the members of the CALIFORNIA CLASS  
3 as required by law;

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

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

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

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

25 1. Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA CLASS, which would establish  
27 incompatible standards of conduct for the DEFENDANT; and/or;  
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2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

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

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

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

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**THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

27           34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
28 CALIFORNIA LABOR SUB-CLASS Members is impracticable



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

- 3           a. Whether DEFENDANT unlawfully failed to correctly calculate and pay wages,  
4 including overtime compensation, to members of the CALIFORNIA LABOR  
5 SUB-CLASS in violation of the California Labor Code and California regulations  
6 and the applicable California Wage Order;
- 7           b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to  
8 overtime compensation for overtime worked under the overtime pay requirements  
9 of California law;
- 10          c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
11 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
12 thirty (30) minute meal breaks and rest periods;
- 13          d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
14 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
15 statements;
- 16          e. Whether DEFENDANT have engaged in unfair competition by the above-listed  
17 conduct;
- 18          f. The proper measure of damages and penalties owed to the members of the  
19 CALIFORNIA LABOR SUB-CLASS; and
- 20          g. Whether DEFENDANT' conduct was willful.

21           36. DEFENDANT, as a matter of company policy, practice and procedure, failed to  
22 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS  
23 Members and failed to provide accurate records of the applicable overtime rates for the overtime  
24 worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members,  
25 including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by  
26 DEFENDANT according to uniform and systematic company procedures as alleged herein  
27 above. This business practice was uniformly applied to each and every member of the  
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1 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
2 adjudicated on a class-wide basis.

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

- 5 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF  
6 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime  
7 pay for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194 & §  
8 1198;
- 9 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and  
10 the other members of the CALIFORNIA CLASS with all legally required off-duty,  
11 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 12 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
13 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
14 statement in writing showing all accurate and applicable overtime rates in effect  
15 during the pay period and the corresponding amount of time worked at each  
16 overtime rate by the employee;
- 17 d. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
18 employee is discharged or quits from employment, the employer must pay the  
19 employee all wages due without abatement, by failing to tender full payment  
20 and/or restitution of wages owed or in the manner required by California law to  
21 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
22 their employment.

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

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

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

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

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

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

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
  - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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

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

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

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

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

6           46. By the conduct alleged herein, DEFENDANT’S practices were deceptive and  
7 fraudulent in that DEFENDANT’ uniform policy and practice failed to pay PLAINTIFF, and  
8 other members of the CALIFORNIA CLASS, wages due for all time worked, including overtime  
9 worked, failed to accurately to record the time worked, and failed to provide the required amount  
10 of compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission  
11 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should  
12 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
13 restitution of wages wrongfully withheld.

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

18           48. By the conduct alleged herein, DEFENDANT’ practices were also unfair and  
19 deceptive in that DEFENDANT’ uniform policies, practices and procedures failed to provide  
20 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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



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

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

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

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

21           55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
26 and economic harm unless DEFENDANT are restrained from continuing to engage in these  
27 unlawful and unfair business practices.  
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**SECOND CAUSE OF ACTION**

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

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

56. 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.

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

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

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

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

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

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

1 be on-call and to respond to telephone calls related to DEFENDANT' business without  
2 compensation for this time worked.

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

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

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

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

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

27 68. In performing the acts and practices herein alleged in violation of California labor  
28 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all  
time worked and provide them with requisite compensation, DEFENDANT acted and continue  
to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of

1 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,  
2 or the consequences to them, and with the despicable intent of depriving them of their property  
3 and legal rights, and otherwise causing them injury in order to increase company profits at the  
4 expense of these employees.

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

16 **THIRD CAUSE OF ACTION**

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

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
25 bring a claim for DEFENDANT' willful and intentional violations of the California Labor Code  
26 and the Industrial Welfare Commission requirements for DEFENDANT' failure to accurately  
27 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the  
28 CALIFORNIA LABOR SUB-CLASS and DEFENDANT' failure to properly compensate the

1 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work  
2 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

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

26 77. In committing these violations of the California Labor Code, DEFENDANT  
27 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
28 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the

1 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
2 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

17 81. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
18 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
19 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
20 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
22 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'  
23 business records and witnessed by employees.

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

83. DEFENDANT knew or should have known that PLAINTIFF and the other  
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime

1 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
3 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
5 overtime rate.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
5 **DEFENDANT)**

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

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

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

27 89. As a proximate result of the aforementioned violations, PLAINTIFF and  
28 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.



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**FIFTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REQUIRED REST PERIODS**

**(Cal. Lab. Code §§ 226.7 & 512)**

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

90. 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.

91. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were 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. From time to time, 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 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT' managers.

92. 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.

93. 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.

**SIXTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS  
(Cal. Lab. Code § 226)**

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

94. 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.

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

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

1           96.     When PLAINTIFF and other CALIFORNIA CLASS Members worked off the  
2 clock without compensation, and/or missed meal and rest breaks, DEFENDANT also failed to  
3 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and  
4 accurate wage statements which failed to show, among other things, the correct name of  
5 PLAINTIFF's employer, the correct overtime rate for overtime worked, including, work  
6 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and  
7 the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that  
8 every employer shall furnish each of his or her employees with an accurate itemized wage  
9 statement in writing showing, among other things, gross wages earned and all applicable hourly  
10 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
11 rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to  
12 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
13 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
15 226.

16           97.     DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code  
17 § 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 difficult  
21 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period  
23 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a  
24 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the  
25 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and  
26 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
5 **DEFENDANT)**

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

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

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

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

19 101. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

103. 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

1 from the due date thereof at the same rate until paid or until an action therefor is  
2 commenced; but the wages shall not continue for more than 30 days.

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

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

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

14 **(Cal. Lab. Code § 2802)**

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

17 106. 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  
19 this Complaint.

20 107. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

26 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
27 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS  
28 members for required expenses incurred in the discharge of their job duties for DEFENDANT'  
benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA

1 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
2 associated with the use of their personal cellular phones for DEFENDANT' benefit. In order to  
3 perform work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
4 Members were required to carry and respond to their personal cell phone. As a result, in the course  
5 of their employment with DEFENDANT, PLAINTIFF and other Members of the CALIFORNIA  
6 LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not  
7 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
8 benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.  
9 DEFENDANT is estopped by DEFENDANT' conduct to assert any waiver of this expectation.  
10 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA  
11 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF  
12 and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is  
13 required to do under the laws and regulations of California.

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

18 **NINTH CAUSE OF ACTION**

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

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

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

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

24 111. PAGA is a mechanism by which the State of California itself can enforce state  
25 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the  
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
27 fundamentally a law enforcement action designed to protect the public and not to benefit private  
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting  
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved  
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations  
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 112. PLAINTIFF, and such persons that may be added from time to time who satisfy  
6 the requirements and exhaust the administrative procedures under the Private Attorney General  
7 Act, bring this Representative Action on behalf of the State of California with respect to  
8 themselves and all individuals who are or previously were employed by DEFENDANT and  
9 classified as non-exempt employees in California during the time period of December 21, 2019  
10 until the present (the "AGGRIEVED EMPLOYEES").

11 113. On December 21, 2020, PLAINTIFF gave written notice by certified mail to the  
12 Labor and Workforce Development Agency (the "Agency") and the employer of the  
13 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.  
14 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
15 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
16 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
17 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
18 EMPLOYEES as herein defined.

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

1 Code Private Attorney General Act of 2004 as the representative of the State of California for the  
2 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for a judgment against each DEFENDANT, jointly and  
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth,  
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
21 action pursuant to Cal. Code of Civ. Proc. § 382;  
22 b. Compensatory damages, according to proof at trial, including compensatory  
23 damages for minimum wages and overtime compensation due to PLAINTIFFS and  
24 the other members of the CALIFORNIA LABOR SUB-CLASS, during the  
25 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at  
26 the statutory rate;  
27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
28 the applicable IWC Wage Order;



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- d. Damages pursuant to California Labor Code §1102.5;
- e. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest; and
- g. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

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

4. On all claims:

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

DATED: February 24, 2021

**ZAKAY LAW GROUP, APC**

By: 

Shani O. Zakay  
Attorney for Plaintiffs

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**DEMAND FOR A JURY TRIAL**

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

DATED: February 24, 2021

**ZAKAY LAW GROUP, APC**

By: 

Shani O. Zakay  
Attorney for Plaintiff

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**EXHIBIT 1**



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December 20, 2020

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

**GUIDED DISCOVERIES, INC.**

c/o Robert Northup  
151 S. El Molino Avenue, #303  
Pasadena, CA 91101  
***Certified U.S. Mail with Return Receipt***

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

Dear Sir/ Madam:

This office represents CRAIG MELLINGER (“Client”) and other aggrieved employees in a class action against GUIDED DISCOVERIES, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California. Client was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contend that Defendant’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Sincerely,  
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

**ZAKAY LAW GROUP, APLC**  
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

CRAIG MELLINGER, an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

GUIDED DISCOVERIES, INC. a California  
corporation; and DOES 1-50, Inclusive,

Defendant.

Case No:

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Craig Mellinger (“PLAINTIFF”), an individual, on behalf of himself and all other  
2 similarly situated current and former employees, allege on information and belief, except for their  
3 own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant GUIDED DISCOVERIES, INC. (“DEFENDANT”) is a California  
6 corporation that at all relevant times mentioned herein conducted and continues to conduct  
7 substantial and regular business throughout California, including the County of Los Angeles.

8 2. DEFENDANT is an educational non-profit specializing in school programs and  
9 summer camps in Southern California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
11 employee entitled to minimum wages and overtime pay and meal and rest periods from January  
12 2016 to August 2020.

13 4. PLAINTIFF was at all times relevant mentioned herein classified by  
14 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and  
15 entitled to meal and rest breaks.. The amount in controversy for PLAINTIFF individually does  
16 not exceed the sum or value of \$75,000.

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

24 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’ uniform policy and practice  
27 which failed to lawfully compensate these employees for all their time worked, including  
28 overtime. DEFENDANT’ uniform policy and practice alleged herein is an unlawful, unfair and  
deceptive business practice whereby DEFENDANT retained and continue to retain wages due

1 to 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' past and  
5 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

23 **THE CONDUCT**

24 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
25 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
26 worked, meaning the time during which an employee is subject to the control of an employer,  
27 including all the time the employee is suffered or permitted to work. From time to time,  
28 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without



1 paying them for all the time they were under DEFENDANT’ control. Specifically,  
2 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be  
3 PLAINTIFFS’ off-duty meal break. PLAINTIFFS were often interrupted by work assignments.  
4 Indeed there were many days where PLAINTIFF did not even receive a partial lunch.  
5 Moreover, PLAINTIFF, from time to time, was not compensated for work he performed while  
6 “on-call” responding to telephone calls from supervisors, co-workers, and clients. In effect, it  
7 was DEFENDANT’ policy to *only* pay PLAINTIFF if a telephone call from a someone resulted  
8 in the PLAINTIFF having to be dispatched and perform work physically. As a result, the  
9 PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited minimum  
10 wage and overtime compensation by working without their time being accurately recorded and  
11 without compensation at the applicable minimum wage and overtime rates. DEFENDANT’  
12 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
13 for all time worked is evidenced by DEFENDANT’ business records.

14 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continue  
15 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
16 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to  
17 accurately calculate wages for overtime worked by PLAINTIFF and other members of the  
18 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime  
19 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
20 forfeited wages due them for working overtime without compensation at the correct overtime  
21 rates. DEFENDANT’ uniform policy and practice to not pay the members of the CALIFORNIA  
22 CLASS the correct overtime rate for all overtime worked in accordance with applicable law is  
23 evidenced by DEFENDANT’ business records.

24 11. As a result of their rigorous work schedules, PLAINTIFF and other  
25 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal  
26 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other  
27 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT  
28 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,

1 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
2 second off-duty meal period each workday in which these employees were required by  
3 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA  
4 CLASS Members therefore forfeited meal breaks without additional compensation and in  
5 accordance with DEFENDANT' strict corporate policy and practice

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

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

1 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with  
2 wage statements which violated Cal. Lab. Code § 226.

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

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

27 16. DEFENDANT as a matter of corporate policy, practice and procedure,  
28 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and

1 the other CALIFORNIA CLASS Members for required business expenses incurred by  
2 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
3 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
4 are required to indemnify employees for all expenses incurred in the course and scope of their  
5 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or  
6 her employee for all necessary expenditures or losses incurred by the employee in direct  
7 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
8 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
9 believed them to be unlawful."

10       17. In the course of their employment, PLAINTIFF and other CALIFORNIA  
11 CLASS Members, as a business expense, were required by DEFENDANT to use personal  
12 cellular phones as a result of and in furtherance of their job duties as employees for  
13 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
14 associated with the use of the personal cellular phones for DEFENDANT' benefit. In order to  
15 make deliveries for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members  
16 were required to call customers or other employees and as such it is mandatory to have a cell  
17 phone. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and  
18 other Members of the CALIFORNIA CLASS incurred unreimbursed business expenses which  
19 included, but were not limited to, costs related to the use of their personal cellular phones all on  
20 behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA  
21 CLASS Members were also not legally reimbursed or indemnified by DEFENDANT for the  
22 cost associated with using their personal vehicles while performing for DEFENDANT. As a  
23 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members  
24 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but  
25 were not limited to, costs related to travel, all on behalf of and for the benefit of DEFENDANT.  
26 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
27 \$75,000.

1 **JURISDICTION AND VENUE**

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

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

11 **THE CALIFORNIA CLASS**

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

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

24 22. The California Legislature has commanded that "all wages... ..earned by any  
25 person in any employment are due and payable twice during each calendar month, on days  
26 designated in advance by the employer as the regular paydays", and further that "[a]ny work in  
27 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .  
28 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay

1 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),  
2 however, is statutorily authorized to “establish exemptions from the requirement that an  
3 overtime rate of compensation be paid... ..for executive, administrative, and professional  
4 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the  
5 test of the exemption, [and] customarily and regularly exercises discretion and independent  
6 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFFS nor the  
7 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS  
8 qualify for exemption from the above requirements.

9         23.     DEFENDANT, as a matter of company policy, practice and procedure, and in  
10 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
11 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
12 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly  
13 record, and pay wages, including overtime compensation for time worked by PLAINTIFF and  
14 the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the  
15 benefit of this work, required employees to perform this work and permitted or suffered to  
16 permit this work.

17         24.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
18 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
19 employee for all overtime worked at the applicable rate, as required by California Labor Code  
20 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the  
21 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so  
22 as to include all earnings in the overtime compensation calculation as required by California  
23 Labor Code §§ 510, *et seq.*

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

26         26.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
27 California law by:  
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- 1 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
2 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
3 company policies, practices and procedures that failed to pay all wages due the  
4 CALIFORNIA CLASS for all time worked, including overtime, and failed to  
5 accurately record the applicable rates of all overtime worked by the  
6 CALIFORNIA CLASS;
- 7 b. Committing an act of unfair competition in violation of the California Unfair  
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
9 unfairly, and/or deceptively having in place a company policy, practice and  
10 procedure that failed to correctly calculate overtime compensation due to  
11 PLAINTIFFS and the members of the CALIFORNIA CLASS;
- 12 c. Committing an act of unfair competition in violation of the California Unfair  
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
14 provide mandatory meal and/or rest breaks to PLAINTIFFS and the  
15 CALIFORNIA CLASS members; and

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

- 18 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
19 joinder of all such persons is impracticable and the disposition of their claims as  
20 a class will benefit the parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
22 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
23 uniformly to every member of the CALIFORNIA CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each  
25 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
26 of the CALIFORNIA CLASS, was subjected to the uniform employment  
27 practices of DEFENDANT and was a non-exempt employee paid on an hourly  
28 basis who was subjected to the DEFENDANT' practice and policy which failed

1 to pay all wages due to the CALIFORNIA CLASS for all time worked by the  
2 CALIFORNIA CLASS and thereby systematically under pays overtime  
3 compensation to the CALIFORNIA CLASS. PLAINTIFFS sustained economic  
4 injury as a result of DEFENDANT’ employment practices. PLAINTIFF and the  
5 members of the CALIFORNIA CLASS were and are similarly or identically  
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
7 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

28



1           b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
2 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
3 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
4 DEFENDANT uniformly failed to pay all wages due, including the correct  
5 overtime rate, for all time worked by the members of the CALIFORNIA CLASS  
6 as required by law;

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

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

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

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

1 CALIFORNIA CLASS Members will avoid asserting their rights individually  
2 out of fear of retaliation or adverse impact on their employment;

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

5 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
6 obtain effective and economic legal redress unless the action is maintained as a  
7 Class Action;

8 e. There is a community of interest in obtaining appropriate legal and equitable  
9 relief for the acts of unfair competition, statutory violations and other  
10 improprieties, and in obtaining adequate compensation for the damages and  
11 injuries which DEFENDANT' actions have inflicted upon the CALIFORNIA  
12 CLASS;

13 f. There is a community of interest in ensuring that the combined assets of  
14 DEFENDANT are sufficient to adequately compensate the members of the  
15 CALIFORNIA CLASS for the injuries sustained;

16 g. DEFENDANT have acted or refused to act on grounds generally applicable to  
17 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
18 with respect to the CALIFORNIA CLASS as a whole;

19 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
20 business records of DEFENDANT; and

21 i. Class treatment provides manageable judicial treatment calculated to bring an  
22 efficient and rapid conclusion to all litigation of all wage and hour related claims  
23 arising out of the conduct of DEFENDANT as to the members of the  
24 CALIFORNIA CLASS.

25 30. DEFENDANT maintain records from which the Court can ascertain and identify  
26 by job title each of DEFENDANT' employees who have been systematically, intentionally and  
27 uniformly subjected to DEFENDANT' company policy, practices and procedures as herein  
28

1 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles  
2 of similarly situated employees when they have been identified.

3 **THE CALIFORNIA LABOR SUB-CLASS**

4 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh  
5 causes of Action on behalf of a California sub-class, defined as all members of the  
6 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR  
7 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint  
8 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS  
9 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
10 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
11 (\$5,000,000.00).

12 32. DEFENDANT, as a matter of company policy, practice and procedure, and in  
13 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
15 willfully, engaged in a practice whereby DEFENDANT failed to pay wages for all time worked  
16 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and failed  
17 to correctly calculate overtime compensation for the overtime worked by PLAINTIFF and the  
18 other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT  
19 enjoyed the benefit of this work, required employees to perform this work and permitted or  
20 suffered to permit this work. DEFENDANT have uniformly denied these CALIFORNIA  
21 LABOR SUB-CLASS Members wages at the correct amount to which these employees are  
22 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable  
23 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
24 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
25 accordingly.

26 33. DEFENDANT maintains records from which the Court can ascertain and  
27 identify by name and job title, each of DEFENDANT’ employees who have been  
28 systematically, intentionally and uniformly subjected to DEFENDANT’ company policy,

1 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint  
2 to include any additional job titles of similarly situated employees when they have been  
3 identified.

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

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

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

26 36. DEFENDANT, as a matter of company policy, practice and procedure, failed to  
27 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS  
28 Members and failed to provide accurate records of the applicable overtime rates for the

1 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS  
2 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly  
3 basis by DEFENDANT according to uniform and systematic company procedures as alleged  
4 herein above. This business practice was uniformly applied to each and every member of the  
5 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
6 adjudicated on a class-wide basis.

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

- 9 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay  
10 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the  
11 correct overtime pay for which DEFENDANT are liable pursuant to Cal. Lab.  
12 Code § 1194 & § 1198;
- 13 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
14 and the other members of the CALIFORNIA CLASS with all legally required  
15 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
16 rest breaks;
- 17 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
18 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
19 statement in writing showing all accurate and applicable overtime rates in effect  
20 during the pay period and the corresponding amount of time worked at each  
21 overtime rate by the employee;
- 22 d. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
23 employee is discharged or quits from employment, the employer must pay the  
24 employee all wages due without abatement, by failing to tender full payment  
25 and/or restitution of wages owed or in the manner required by California law to  
26 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
27 their employment.

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

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

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

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

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

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

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

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

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

15           b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
16 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
17 SUB-CLASS, making appropriate class-wide relief with respect to the  
18 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
19 uniformly failed to pay all wages due, including the correct overtime rate, for all  
20 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as  
21 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 question  
25 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
26 Class Action is superior to other available methods for the fair and efficient  
27 adjudication of the controversy, including consideration of:  
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- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
  - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is

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likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANT)**

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

20 42. DEFENDANT are a “person” as that term is defined under Cal. Bus. And Prof.  
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may  
27 be enjoined in any court of competent jurisdiction. The court may make such orders or  
28 judgments, including the appointment of a receiver, as 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

1 money or property, real or personal, which may have been acquired by means of such  
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 44. By the conduct alleged herein, DEFENDANT have engaged and continue to  
4 engage in a business practice which violates California law, including but not limited to, the  
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
6 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
7 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &  
8 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
9 unfair competition, including restitution of wages wrongfully withheld.

10 45. By the conduct alleged herein, DEFENDANT' practices were unlawful and  
11 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
12 unscrupulous or substantially injurious to employees, and were without valid justification or  
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
14 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
15 withheld.

16 46. By the conduct alleged herein, DEFENDANT'S practices were deceptive and  
17 fraudulent in that DEFENDANT' uniform policy and practice failed to pay PLAINTIFF, and  
18 other members of the CALIFORNIA CLASS, wages due for all time worked, including  
19 overtime worked, failed to accurately to record the time worked, and failed to provide the  
20 required amount of compensation, pursuant to the applicable Cal. Lab. Code, and Industrial  
21 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for  
22 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code  
23 § 17203, including restitution of wages wrongfully withheld.

24 47. By the conduct alleged herein, DEFENDANT' practices were also unlawful,  
25 unfair and deceptive in that DEFENDANT' employment practices caused PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
27 DEFENDANT.  
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1           48. By the conduct alleged herein, DEFENDANT’ practices were also unfair and  
2 deceptive in that DEFENDANT’ uniform policies, practices and procedures failed to provide  
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

9           50. PLAINTIFF further demands on behalf of herself and on behalf of each  
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
11 was not timely provided as required by law.

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

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

23           53. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
24 and do, seek such relief as may be necessary to restore to them the money and property which  
25 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the  
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
27 unfair business practices, including earned but unpaid wages for all overtime worked.  
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1 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
4 engaging in any unlawful and unfair business practices in the future.

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

12 **SECOND CAUSE OF ACTION**

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

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

17 56. 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  
19 of this Complaint.

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

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

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

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

3           61. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
5 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice  
6 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the  
7 other members of the CALIFORNIA LABOR SUB-CLASS.

8           62. DEFENDANT' uniform pattern of unlawful wage and hour practices manifested,  
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a  
10 result of implementing a uniform policy and practice that denies accurate compensation to  
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
12 minimum wage pay by requiring PLAINTIFF and other members of the CALIFORNIA  
13 LABOR SUB-CLASS to be on-call and to respond to telephone calls related to DEFENDANT'  
14 business without compensation for this time worked.

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

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

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

27           66. By virtue of DEFENDANT' unlawful failure to accurately pay all earned  
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
CLASS for the true time they worked, PLAINTIFF and the other members of the  
CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic

1 injury in amounts which are presently unknown to them and which will be ascertained  
2 according to proof at trial.

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

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

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



**THIRD CAUSE OF ACTION**

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

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

70. 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.

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

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

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

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

75. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANT’ uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact  
2 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

81. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in

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

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

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

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

27 85. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
28 therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
interest, statutory costs, as well as the assessment of any statutory penalties against  
DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable

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

8  
9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

9  
10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

9  
10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**  
12 **(Cal. Lab. Code § 226)**

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

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

18 95. Cal. Labor Code § 226 provides that an employer must furnish employees with  
19 an “accurate itemized” statement in writing showing:

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment of  
23 overtime under subdivision (a) of Section 515 or any applicable order of the  
24 Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the  
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the  
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

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

9 96. When PLAINTIFF and other CALIFORNIA CLASS Members worked off the  
10 clock without compensation, and/or missed meal and rest breaks, DEFENDANT also failed to  
11 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and  
12 accurate wage statements which failed to show, among other things, the correct name of  
13 PLAINTIFF's employer, the correct overtime rate for overtime worked, including, work  
14 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,  
15 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226  
16 provides that every employer shall furnish each of his or her employees with an accurate  
17 itemized wage statement in writing showing, among other things, gross wages earned and all  
18 applicable hourly rates in effect during the pay period and the corresponding amount of time  
19 worked at each hourly rate. Aside from the violations listed above in this paragraph,  
20 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the  
21 requirements under California Labor Code 226 *et seq.* As a result, from time to time  
22 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with  
23 wage statements which violated Cal. Lab. Code § 226.

24 97. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor  
25 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the  
26 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
27 expended calculating the correct rates for the overtime worked and the amount of employment  
28 taxes which were not properly paid to state and federal tax authorities. These damages are

1 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA  
2 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the  
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
4 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according  
5 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for  
6 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

7  
8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

16 99. Cal. Lab. Code § 200 provides that:

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

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

24 101. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or her  
26 employment, his or her wages shall become due and payable not later than 72  
27 hours thereafter, unless the employee has given 72 hours previous notice of his or  
28 her intention to quit, in which case the employee is entitled to his or her wages at  
the time of quitting. Notwithstanding any other provision of law, an employee  
who quits without providing a 72-hour notice shall be entitled to receive payment



1 by mail if he or she so requests and designates a mailing address. The date of the  
2 mailing shall constitute the date of payment for purposes of the requirement to  
provide payment within 72 hours of the notice of quitting.

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

5 103. Cal. Lab. Code § 203 provides:

6 If an employer willfully fails to pay, without abatement or reduction, in  
7 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee  
8 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  
therefor is commenced; but the wages shall not continue for more than 30 days.

9 104. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
10 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,  
11 to these employees who actually worked overtime, as required by law.

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

20 **(Cal. Lab. Code § 2802)**

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

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

26 107. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures  
28 or losses incurred by the employee in direct consequence of the discharge of his

1 or her duties, or of his or her obedience to the directions of the employer, even  
2 though unlawful, unless the employee, at the time of obeying the directions,  
3 believed them to be unlawful.

4 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
5 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS  
6 members for required expenses incurred in the discharge of their job duties for DEFENDANT'  
7 benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA  
8 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost  
9 associated with the use of their personal cellular phones for DEFENDANT' benefit. In order to  
10 perform work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
11 Members were required to carry and respond to their personal cell phone. As a result, in the  
12 course of their employment with DEFENDANT, PLAINTIFF and other Members of the  
13 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which  
14 included, but were not limited to, costs related to the use of their personal cellular phones all on  
15 behalf of and for the benefit of DEFENDANT. These expenses are necessary to complete their  
16 principal job duties. DEFENDANT is estopped by DEFENDANT' conduct to assert any waiver  
17 of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF  
18 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and  
19 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these  
20 expenses as an employer is required to do under the laws and regulations of California.

21 109. PLAINTIFF therefore demands reimbursement for expenditures or losses  
22 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
23 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
24 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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**PRAYER FOR RELIEF**

1                   WHEREFORE, Plaintiffs pray for a judgment against each DEFENDANT, jointly and  
2 severally, as follows:

3  
4           1. On behalf of the CALIFORNIA CLASS:

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

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

- 16                   a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
17 Eighth, Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as  
18 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 19                   b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for minimum wages and overtime compensation due to PLAINTIFFS  
21 and the other members of the CALIFORNIA LABOR SUB-CLASS, during the  
22 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at  
23 the statutory rate;
- 24                   c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
25 the applicable IWC Wage Order;
- 26                   d. Damages pursuant to California Labor Code §1102.5;
- 27                   e. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
28 which a violation occurs and one hundred dollars (\$100) per member of the

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CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest; and
- g. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: \_\_\_\_\_, 2020

**ZAKAY LAW GROUP, APC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiffs

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**DEMAND FOR A JURY TRIAL**

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

DATED: \_\_\_\_\_, 2020

**ZAKAY LAW GROUP, APC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiff

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**EXHIBIT 1**