

**SUMMONS
(CITACION JUDICIAL)**

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

BARRETT BUSINESS SERVICES, INC., a Maryland corporation;
ISLAND PIZZA, INC., a California corporation; and DOES 1 through
50, inclusive,

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

FAITH SMITH, an individual, on behalf of herself and on behalf of all
persons similarly situated,

FILED SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
2019 AUG 13 P 3:52
D. WAGNER
D. WAGNER, COUNTY CLERK

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

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

Contra Costa Superior Court, Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER: 19-01654
(Número del caso)

VIA FAX

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

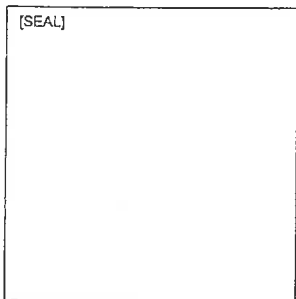
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE: AUG 13 2019
(Fecha)

Clerk, by D. WAGNER, Deputy
(Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

FILED

2019 AUG 13 P 3:51

STATE CLERK
SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: **D. WAGNER**
CLERK

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

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

9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF CONTRA COSTA**

12 FAITH SMITH, an individual, on behalf of
herself and on behalf of all persons similarly
13 situated,

14 Plaintiff,

15 v.

16 BARRETT BUSINESS SERVICES, INC., a
Maryland corporation; ISLAND PIZZA, INC.,
17 a California corporation; and DOES 1 through
50, inclusive,

18 Defendants.

Case No: **C19- 01654**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL UNDER LOCAL RULE, THIS CASE IS ASSIGNED TO DEPT 39, FOR ALL PURPOSES.

26 Plaintiff Faith Smith ("PLAINTIFF"), an individual, on behalf of herself and all other similarly
27 situated current and former employees, alleges on information and belief, except for her own
28 acts and knowledge which are based on personal knowledge, the following:

VIA FAX

THE PARTIES

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1. Defendant Barrett Business Services, Inc. ("BBSI") is a Maryland corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant Island Pizza, Inc. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant BBSI is a provider of business management solutions, such as staffing, for small and mid-sized companies.

4. Defendant Island Pizza, Inc., is a franchisee of Domino's Pizza.

5. Defendants BBSI and/or Island Pizza, Inc. were the joint employers of PLAINTIFF as evidenced by the contracts signed by DEFENDANTS and PLAINTIFF, work performed by PLAINTIFF for DEFENDANTS, and DEFENDANTS are therefore responsible as employers for the conduct alleged herein and referred to herein as "DEFENDANTS".

6. PLAINTIFF has been employed by DEFENDANTS in California since January 4, 2019 and was and is at all times classified by DEFENDANTS as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods.

7. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all persons who are or previously were employed by Defendant BBSI and/or Defendant Island Pizza, Inc., in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to lawfully compensate these employees. DEFENDANTS' uniform policy and

1 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS
2 for more than five (5) hours during some shifts without receiving a meal break. Further,
3 DEFENDANTS fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period for some workdays in which these employees are required by
5 DEFENDANTS to work ten (10) hours of work. As a result, DEFENDANTS' failure to provide
6 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
7 evidenced by DEFENDANTS' business records. PLAINTIFF and other members of the
8 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
9 accordance with DEFENDANTS' strict corporate policy and practice.

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

21 13. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
22 miss meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other
23 members of the CALIFORNIA CLASS with complete and accurate wage statements which
24 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
25 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
26 an accurate itemized wage statement in writing showing, among other things, gross wages
27 earned and all applicable hourly rates in effect during the pay period and the corresponding
28 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANTS

1 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
2 Section 226(a) in that DEFENDANTS failed to correctly list the correct name of the legal entity
3 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
4 the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
5 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
6 As a result, DEFENDANTS from time to time provided PLAINTIFF and the other members of
7 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

18 15. By reason of this uniform conduct applicable to PLAINTIFF and the other
19 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
20 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
21 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which
22 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
23 other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal
24 and rest breaks is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional
25 disregard of the obligation to meet this burden, DEFENDANTS failed to properly calculate
26 and/or pay all required compensation for work performed by the members of the CALIFORNIA
27 CLASS and violated the California Labor Code and regulations promulgated thereunder as
28 herein alleged.

1 16. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
2 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
3 Labor Code. DEFENDANTS did not have a policy or practice which provided timely off-duty
4 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed
5 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent her
6 from being relieved of all of her duties for the legally required off-duty meal periods. As a
7 result, DEFENDANTS' failure to provide PLAINTIFF with the legally required meal periods is
8 evidenced by DEFENDANTS' business records. As a result of DEFENDANTS not accurately
9 recording all missed meal and rest periods and/or reporting time wages due, the wage statements
10 issued to PLAINTIFF by DEFENDANTS violated California law, and in particular, Labor Code
11 Section 226(a). To date, DEFENDANTS has yet to pay PLAINTIFF all of her wages due to her
12 and DEFENDANTS has failed to pay any penalty wages owed to her under California Labor
13 Code Section 203.

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

25 18. In the course of their employment, PLAINTIFF and other CALIFORNIA
26 CLASS Members, as a business expense, were required by DEFENDANTS to use personal
27 cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost

1 associated with the use of the personal cellular phones for DEFENDANTS' benefit. In order to
2 make deliveries for DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS Members
3 were required to call customers or other employees and as such it is mandatory to have a cell
4 phone. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and
5 other Members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
6 included, but were not limited to, costs related to the use of their personal cellular phones all on
7 behalf of and for the benefit of DEFENDANTS. Further, PLAINTIFF and other CALIFORNIA
8 CLASS Members were also not legally reimbursed or indemnified by DEFENDANTS for the
9 cost associated with using their personal vehicles while performing for DEFENDANTS. As a
10 result, in the course of their employment with DEFENDANTS, PLAINTIFF and other members
11 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
12 were not limited to, costs related to travel, all on behalf of and for the benefit of
13 DEFENDANTS. The amount in controversy for PLAINTIFF individually does not exceed the
14 sum or value of \$75,000.

15 JURISDICTION AND VENUE

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

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

25 THE CALIFORNIA CLASS

26 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
28 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all

1 individuals who are or previously were employed by Defendant BBSI and/or Defendant Island
2 Pizza, Inc. in California and classified as non-exempt employees (the "CALIFORNIA CLASS")
3 at any time during the period beginning four (4) years prior to the filing of this Complaint and
4 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD") The
5 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
6 five million dollars (\$5,000,000.00).

7 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
9 accordingly.

10 23. DEFENDANTS, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all
14 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even
15 though DEFENDANTS enjoyed the benefit of this work, required employees to perform this
16 work and permits or suffers to permit this work.

17 24. DEFENDANTS has the legal burden to establish that each and every
18 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
19 required by California laws. The DEFENDANTS, however, as a matter of uniform and
20 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
21 PERIOD and still fails to have in place a policy or practice to ensure that each and every
22 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
23 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
24 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
25 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

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

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1 26. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
2 under California law by:

- 3 a. Committing an act of unfair competition in violation of the UCL, by failing to
4 provide mandatory meal and/or rest breaks to PLAINTIFF and the
5 CALIFORNIA CLASS members.
- 6 b. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
7 17200, *et seq.*, by failing to reimburse PLAINTIFF and the CALIFORNIA
8 CLASS Members with necessary expenses incurred in the discharge of their job
9 duties.

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

- 12 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
13 joinder of all such persons is impracticable and the disposition of their claims as
14 a class will benefit the parties and the Court;
- 15 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
16 raised in this Complaint are common to the CALIFORNIA CLASS will apply
17 uniformly to every member of the CALIFORNIA CLASS;
- 18 c. The claims of the representative PLAINTIFF are typical of the claims of each
19 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
20 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
21 an hourly basis who was subjected to the DEFENDANTS' deceptive practice
22 and policy which failed to provide the legally required meal and rest periods to
23 the CALIFORNIA CLASS and thereby systematically underpaid compensation
24 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
25 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
26 CALIFORNIA CLASS Members were and are similarly or identically harmed by
27 the same unlawful, unfair, deceptive and persuasive pattern of misconduct
28 engaged in by DEFENDANTS by deceptively telling all the CALIFORNIA

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CLASS Members that they were not entitled to minimum wages and the reimbursement of business expenses based on the defined corporate policies and practices, and unfairly failed to pay these employees who were improperly classified as independent contractors; and

- d. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- e. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

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

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

i. The interests of the members of the CALIFORNIA 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 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:

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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 DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS 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 DEFENDANTS' employment practices were 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

- 1 in the context of employment litigation a substantial number of individual
2 CALIFORNIA CLASS Members will avoid asserting their rights individually
3 out of fear of retaliation or adverse impact on their employment;
- 4 c. The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 6 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
7 obtain effective and economic legal redress unless the action is maintained as a
8 Class Action;
- 9 e. There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other
11 improprieties, and in obtaining adequate compensation for the damages and
12 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA
13 CLASS;
- 14 f. There is a community of interest in ensuring that the combined assets of
15 DEFENDANTS are sufficient to adequately compensate the members of the
16 CALIFORNIA CLASS for the injuries sustained;
- 17 g. DEFENDANTS has acted or refused to act on grounds generally applicable to
18 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
19 with respect to the CALIFORNIA CLASS as a whole;
- 20 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
21 business records of DEFENDANTS; and
- 22 i. Class treatment provides manageable judicial treatment calculated to bring an
23 efficient and rapid conclusion to all litigation of all wage and hour related claims
24 arising out of the conduct of DEFENDANTS as to the members of the
25 CALIFORNIA CLASS.
- 26 30. DEFENDANTS maintains records from which the Court can ascertain and
27 identify by job title each of DEFENDANTS' employees who as have been systematically,
28 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
2 any additional job titles 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 and Sixth causes of
5 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
6 CLASS who were employed by Defendant BBSI and/or Defendant Island Pizza, Inc. in
7 California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3)
8 years prior to the filing of the complaint and ending on the date as determined by the Court (the
9 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
10 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
11 Members is under five million dollars (\$5,000,000.00).

12 32. DEFENDANTS, 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,
15 willfully, and systematically willfully, engaged in a practice whereby DEFENDANTS failed to
16 correctly calculate compensation for the time worked by PLAINTIFF and the other members of
17 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees,
18 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
19 this work and permitted or suffered to permit this work. DEFENDANTS has uniformly denied
20 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
21 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
22 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
23 DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
24 accordingly.

25 33. DEFENDANTS maintains records from which the Court can ascertain and
26 identify by name and job title, each of DEFENDANTS' employees who have been
27 systematically, intentionally and uniformly subjected to DEFENDANTS' company policy,
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1 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
2 to include these additional job titles when they have been identified.

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

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

- 7 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
- 11 b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
13 wage statements;
- 14 c. Whether DEFENDANTS has engaged in unfair competition by the above-listed
15 conduct;
- 16 d. The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and
- 18 e. Whether DEFENDANTS' conduct was willful.

19 36. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
22 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
23 statement in writing showing the corresponding correct amount of wages earned
24 by the employee;
- 25 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
26 and the other members of the CALIFORNIA CLASS with all legally required
27 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
28 rest breaks;

- 1 c. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
2 employee is discharged or quits from employment, the employer must pay the
3 employee all wages due without abatement, by failing to tender full payment
4 and/or restitution of wages owed or in the manner required by California law to
5 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
6 their employment, and;
- 7 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
8 CALIFORNIA CLASS Members with necessary expenses incurred in the
9 discharge of their job duties.
- 10 e. Violating Cal. Labor Code §§ 1194, 1197, and the applicable IWC Wage Order,
11 by paying PLAINTIFF and the CALIFORNIA CLASS Members less than the
12 applicable minimum wage for all hours worked in a payroll period.

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

- 15 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
16 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
17 is impracticable and the disposition of their claims as a class will benefit the
18 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 LABOR SUB-
21 CLASS and will apply uniformly to every member of the CALIFORNIA
22 LABOR SUB-CLASS;
- 23 c. The claims of the representative PLAINTIFF are typical of the claims of each
24 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
25 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
26 employee paid on an hourly basis who was subjected to the DEFENDANTS'
27 practice and policy which failed to pay the correct amount of wages due to the
28 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as

1 a result of DEFENDANTS' employment practices. PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
3 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
4 of misconduct engaged in by DEFENDANTS; and

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

13 38. 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 LABOR SUB-CLASS will create
18 the risk of:

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

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

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
28 refused to act on grounds generally applicable to the CALIFORNIA LABOR

1 SUB-CLASS, making appropriate class-wide relief with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
3 uniformly fails to pay all wages due. Including the correct wages for all time
4 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
5 by law;

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

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

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

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

25 2. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical matter
27 be dispositive of the interests of the other members not parties to
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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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS 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.

39. 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;

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

24 **FIRST CAUSE OF ACTION**

25 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

4 41. DEFENDANTS is a “person” as that term is defined under Cal. Bus. And Prof.
5 Code § 17021.

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

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

17 43. By the conduct alleged herein, DEFENDANTS has engaged and continues to
18 engage in a business practice which violates California law, including but not limited to, the
19 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
20 including Sections 204, 226.7, 512, 558, and 1198, for which this Court should issue declaratory
21 and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to
22 prevent and remedy the conduct held to constitute unfair competition, including restitution of
23 wages wrongfully withheld.

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

3 45. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
7 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
8 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
9 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
10 withheld.

11 46. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
12 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANTS.

15 47. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
16 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
17 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
18 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

27 50. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANTS so as to allow
4 DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

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

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

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY MINIMUM WAGES**

28 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

1 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)

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

5 56. Pursuant to California Labor Code §§ 1194, 1197, and the applicable IWC Wage
6 Order, payment to an employee of less than the applicable minimum wage for all hours worked
7 in a payroll period is unlawful.

8 57. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
9 to pay PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members minimum
10 wages for all hours worked by, among other things: requiring, permitting, or suffering
11 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members to work off the
12 clock; requiring, permitting or suffering PLAINTIFF and the other CALIFORNIA LABOR
13 SUB-CLASS members to work through meal and rest breaks; illegally and inaccurately
14 recording time in which PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
15 members worked; failing to properly maintain PLAINTIFF'S and the other CALIFORNIA
16 LABOR SUB-CLASS members' records; failing to provide accurate itemized wage statements
17 to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members for each pay
18 period; and other methods to be discovered.

19 58. DEFENDANT's conduct described herein violates California Labor Code §§
20 1194, 1197, and the applicable IWC Wage Order. As a proximate result of the aforementioned
21 violations, PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members have
22 been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor
23 Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California
24 Labor Code and IWC Wage Orders, PLAINTIFF and the other CALIFORNIA LABOR SUB-
25 CLASS members are entitled to recover the unpaid balance of wages owed to the them by
26 DEFENDANT, plus interest, penalties, attorney's fees, expenses, and costs of suit.

27 **THIRD CAUSE OF ACTION**

28 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

1 (Cal. Lab. Code §§ 226.7 & 512)

2 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
3 Defendants)

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

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

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

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- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

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

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

26 **SIXTH CAUSE OF ACTION**

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

28 **(Cal. Lab. Code § 2802)**

1 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
2 Defendants)

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

6 72. Cal. Lab. Code § 2802 provides, in relevant part, that:

7 An employer shall indemnify his or her employee for all necessary expenditures
8 or losses incurred by the employee in direct consequence of the discharge of his
9 or her duties, or of his or her obedience to the directions of the employer, even
10 though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful.

12 73. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
13 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB- CLASS
14 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
15 benefit. Specifically, DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost
17 associated with the use of their personal cellular phones for DEFENDANTS' benefit. In order to
18 make deliveries for DEFENDANTS, PLAINTIFF and other CALIFORNIA LABOR SUB-
19 CLASS Members were required to call customers or other employees and as such it is
20 mandatory to have a cell phone. As a result, in the course of their employment with
21 DEFENDANTS, PLAINTIFF and other Members of the CALIFORNIA LABOR SUB-CLASS
22 incurred unreimbursed business expenses which included, but were not limited to, costs related
23 to the use of their personal cellular phones all on behalf of and for the benefit of
24 DEFENDANTS. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were also not legally reimbursed or indemnified by DEFENDANTS for the cost
26 associated with using their personal vehicles while performing for DEFENDANTS. As a result,
27 in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the
28 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which

1 included, but were not limited to, costs related to travel, all on behalf of and for the benefit of
2 DEFENDANTS. These expenses are necessary to complete their principal job duties.
3 DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this
4 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and
6 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
7 expenses as an employer is required to do under the laws and regulations of California.

8 74. PLAINTIFF therefore demands reimbursement for expenditures or losses
9 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
10 their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS,
11 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12 **PRAYER FOR RELIEF**

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

- 15 1. On behalf of the CALIFORNIA CLASS:
- 16 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
17 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 18 b. An order temporarily, preliminarily and permanently enjoining and restraining
19 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 20 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
21 withheld from compensation due to PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS; and
- 23 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
24 for restitution of the sums incidental to DEFENDANTS' violations due to
25 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 26 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
28 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action

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- pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
 - 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;
 - g. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 2297.1
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

1 DATED: August 12, 2019

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ZAKAY LAW GROUP, APLC

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By: 

Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

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12 DATED: August 12, 2019

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ZAKAY LAW GROUP, APLC

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By: 

Shani O. Zakay
Attorney for PLAINTIFF

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