

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED

7/25/2019 3:57 PM

SAN LUIS OBISPO SUPERIOR COURT
BY M. Zepeda
M. Zepeda, Deputy Clerk

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

MILLER EVENT MANAGEMENT, INC., a California Corporation;
and Does

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

NICHOLAS LEON, 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), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): **San Luis Obispo Superior Court- Central**
1050 Monterey Street
San Luis Obispo, 93408

CASE NUMBER:
(Número del Caso): **19CV-0435**

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. 3990 Old Town Avenue, Suite C204 San Diego, CA 92110 Telephone: 619-255-9047

DATE: 7/25/2019 3:57 PM /s/Michael Powell
(Fecha) Clerk, by Matthew K. Zepeda, 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):

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

7/25/2019 3:57 PM

SAN LUIS OBISPO SUPERIOR COURT
BY M. Zepeda
M. Zepeda, Deputy Clerk

5 Attorneys for Plaintiff
6 [Additional Counsel Listed on Next Page]

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

10 NICHOLAS LEON, an individual, on
11 behalf of himself and on behalf of all
persons similarly situated,

12 Plaintiff,

13 vs.

14 MILLER EVENT MANAGEMENT,
15 INC., a California Corporation; and Does
1 through 50, Inclusive,

16 Defendants.

Case No. 19CV-0435

CLASS ACTION COMPLAINT FOR:

- 1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
 - 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 - 3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
 - 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 - 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 - 6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.
 - 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
 - 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- DEMAND FOR A JURY TRIAL**

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

5 **THE PARTIES**

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

9 2. DEFENDANT is an all-in-one event management company that focuses
10 primarily on California events.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, reporting time pay, overtime pay and meal and rest
13 periods from June of 2018 to June 27, 2019. PLAINTIFF was at all times relevant mentioned
14 herein classified by DEFENDANT as a non-exempt employee.

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

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

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

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

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

23
24 **THE CONDUCT**

25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
27 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
28

1 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
2 all time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required these employees to work off the clock without paying them for all the
5 time they were under DEFENDANT's control. Specifically, DEFENDANT required
6 PLAINTIFF and CALIFORNIA CLASS Members to arrive to their assigned duty post ten (10)
7 to fifteen (15) minutes prior to the scheduled start time so that these employees could be briefed
8 on their specific duties for their assigned shift. Additionally, DEFENDANT established an on-
9 call shifts policy that required PLAINTIFF and other CALIFORNIA CLASS Members to
10 download an application on their personal cell phones called "Team Xpress" in order to check
11 and see whether or not they were scheduled for certain work shifts. The on-call shifts assigned
12 to PLAINTIFF and other CALIFORNIA CLASS Members were mandatory, but DEFENDANT
13 from time to time does not allow PLAINTIFF and other CALIFORNIA CLASS Members to
14 work a scheduled on-call shift, thereby depriving the employee of the opportunity to earn wages
15 for the time the employee made available to DEFENDANT. Unless PLAINTIFF and other
16 CALIFORNIA CLASS Members were told to physically report to their assigned post via the
17 Team Xpress application, DEFENDANT failed to pay these employees for the time in which
18 they were required to make available to DEFENDANT, and DEFENDANT did not pay
19 PLAINTIFF and other CALIFORNIA CLASS Members for their time spent working while
20 completing the on-call inquiry to DEFENDANT via phone. As a result, PLAINTIFF and other
21 CALIFORNIA CLASS Members forfeited time worked by working without their time being
22 accurately recorded and without compensation at the applicable minimum wage and overtime
23 wage rates. To the extent that the time worked during the pre-shift briefing and/or on-call
24 inquiry did not qualify for overtime premium payment, DEFENDANT failed to pay minimum
25 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
26 1197.1.

27 9. State law provides that employees must be paid overtime and meal break
28

1 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
2 CALIFORNIA CLASS Members were compensated at an hourly rate plus various incentive pay
3 that was tied to specific elements of an employee’s performance.

4 10. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
5 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
6 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
7 performance for DEFENDANT. The non-discretionary incentive program provided all
8 employees paid on an hourly basis with incentive compensation when the employees met the
9 various performance goals set by DEFENDANT. However, when calculating the regular rate
10 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
11 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
12 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
13 the incentive program to potential and new employees as part of the compensation package. As
14 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
15 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
16 resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
17 CALIFORNIA CLASS Members by DEFENDANT. This uniform policy and practice of
18 DEFENDANT was intended to purposefully avoid the payment of the correct overtime
19 compensation as required by California law which allowed DEFENDANT to illegally profit and
20 gain an unfair advantage over competitors who complied with the law.

21 11. In addition, the applicable Wage Order requires that on each workday that an
22 employee reports for work, as scheduled, but is not put to work or is furnished less than half of
23 the employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or
24 scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours,
25 at the employee’s regular rate of pay, which shall not be less than the minimum wage. The
26 applicable Wage Order denominates this as “Reporting Time Pay.” As discussed above,
27 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to regularly check
28

1 the required Team Xpress application downloaded on their personal cell phone to check for
2 available work. From time to time, over the course of their employment, PLAINTIFF and other
3 CALIFORNIA CLASS Members, on dates as reflected in DEFENDANT's business records,
4 reported to work by logging into Defendant's Team Xpress application, as required by
5 DEFENDANT's company handbook. On these days, PLAINTIFF and other CALIFORNIA
6 CLASS Members were not put to work and/or were not furnished with work for less than half
7 of their scheduled shift. PLAINTIFF and other CALIFORNIA CLASS Members were and are
8 compelled to check the Team Xpress application as stated in Defendant's company policies.
9 Thus, failure to adhere to DEFENDANT'S policy may result in verbal or written discipline,
10 including termination of employment. When PLAINTIFF and other CALIFORNIA CLASS
11 Members reported to work, as scheduled, but were furnished less than half of their scheduled
12 day's work, PLAINTIFF and other CALIFORNIA CLASS Members were not compensated
13 with Reporting Time pay, as required by the applicable Wage Order, in that they were not paid
14 a minimum of two hours or for half of their scheduled day's work, not to exceed four hours.
15 DEFENDANT's on-call scheduling triggers Wage Order 7's reporting time pay requirements
16 as these shifts burden employees, who cannot take other jobs, go to school, or make social plans
17 during on-call shifts but who nonetheless receive no compensation from DEFENDANT unless
18 they ultimately are called in to work. This is precisely the kind of abuse that reporting time pay
19 was designed to discourage.

20 12. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
22 a matter of company policy, practice and procedure, intentionally and knowingly failed to
23 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
24 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
25 intended to purposefully avoid the payment of the correct overtime compensation as required
26 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
27 over competitors who complied with the law. To the extent equitable tolling operates to toll
28

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

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

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

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

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

8 16. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
9 Members as a business expense, are required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
12 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
13 course of their employment with DEFENDANT, PLAINTIFF and other members of the
14 CALIFORNIA CLASS incurred unreimbursed business expenses which include, but are not
15 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
16 benefit of DEFENDANT.

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

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS
4 with wage statements which violated Cal. Lab. Code § 226.

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

16 19. Specifically as to PLAINTIFF he was required to work off the clock as described
17 above in paragraph #8. PLAINTIFF was also from time to time unable to take off duty meal
18 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was
19 required to perform work as ordered by DEFENDANT for more than five (5) hours during a
20 shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide
21 PLAINTIFF with a second off-duty meal period from time to time in which he was required by
22 DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest
23 breaks without the correct premium compensation and in accordance with DEFENDANT’s
24 strict corporate policy and practice. DEFENDANT also provided PLAINTIFF with a paystub
25 that failed to accurately display PLAINTIFF’s correct rates of overtime pay and payments for
26 missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
27 To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed
28

1 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in
2 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

3
4 **JURISDICTION AND VENUE**

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

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

14
15 **THE CALIFORNIA CLASS**

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

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

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

14 25. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
18 calculate and record minimum wage and overtime compensation for time worked and meal
19 premium pay for meal period violations by PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
21 employees to perform this work and permitted or suffered to permit this work.

22 26. DEFENDANT has the legal burden to establish that each and every
23 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and meal
24 premium pay and to accurately calculate the “regular rate of pay” by including the incentive
25 compensation that PLAINTIFF and members of the CALIFORNIA CLASS were awarded by
26 DEFENDANT. DEFENDANT, however, as a matter of uniform and systematic policy and
27 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to
28

1 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member
2 is paid the applicable overtime rate for all overtime worked and the correct meal premium pay
3 for all meal period violations, so as to satisfy their burden. This common business practice
4 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
5 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
6 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

7 27. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
8 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
9 employee for all overtime worked at the applicable rate, as required by California Labor Code
10 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
11 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to
12 compensate the employee for applicable meal premium rate, as required by California Labor
13 Code Section 512 and Section 226.7. At no time during the CALIFORNIA CLASS PERIOD
14 was the overtime compensation for any member of the CALIFORNIA CLASS properly
15 recalculated so as to include all earnings in the overtime compensation calculation as required
16 by California Labor Code §§ 510, *et seq.*

17 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

21 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
23 place company policies, practices and procedures that failed to pay all
24 minimum, overtime and reporting time wages due the CALIFORNIA
25 CLASS for all time worked, and failed to accurately record the applicable
26 rates of all overtime worked by the CALIFORNIA CLASS;

27 (b) Committing an act of unfair competition in violation of the California
28

1 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
2 unlawfully, unfairly, and/or deceptively having in place a company policy,
3 practice and procedure that failed to correctly calculate overtime
4 compensation due to PLAINTIFF and the members of the CALIFORNIA
5 CLASS;

6 (c) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 failing to provide mandatory meal and/or rest break premium pay to
9 PLAINTIFF and the CALIFORNIA CLASS members; and,

10 (d) Committing an act of unfair competition in violation of the California
11 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
12 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
13 the CALIFORNIA CLASS members with necessary expenses incurred in
14 the discharge of their job duties.

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

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

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

24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA CLASS, was subjected to the
27 uniform employment practices of DEFENDANT and was a non-exempt
28

1 employee paid on an hourly basis and paid additional non-discretionary
2 incentive wages who was subjected to the DEFENDANT's practice and
3 policy which fails to pay the correct rate of overtime wages due to the
4 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
5 CLASS and thereby systematically underpays overtime compensation to
6 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
7 result of DEFENDANT's employment practices. PLAINTIFF and the
8 members of the CALIFORNIA CLASS were and are similarly or
9 identically harmed by the same unlawful, deceptive, unfair and pervasive
10 pattern of misconduct engaged in by DEFENDANT; and,

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

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

21 (a) Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of
23 separate actions by individual members of the CALIFORNIA CLASS will
24 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 parties opposing the
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CALIFORNIA CLASS; and/or,

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

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

1) 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 DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(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:

1) The interests of the members of the CALIFORNIA CLASS in

1 individually controlling the prosecution or defense of separate
2 actions in that the substantial expense of individual actions will be
3 avoided to recover the relatively small amount of economic losses
4 sustained by the individual CALIFORNIA CLASS Members when
5 compared to the substantial expense and burden of individual
6 prosecution of this litigation;

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

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

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

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

24 4) A class action is superior to other available methods for the fair
25 and efficient adjudication of this litigation because class treatment
26 will obviate the need for unduly and unnecessary duplicative
27 litigation that is likely to result in the absence of certification of
28

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

4 (a) The questions of law and fact common to the CALIFORNIA CLASS
5 predominate over any question affecting only individual CALIFORNIA
6 CLASS Members because the DEFENDANT's employment practices are
7 uniform and systematically applied with respect to the CALIFORNIA
8 CLASS;

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

15 (c) The members of the CALIFORNIA CLASS are so numerous that it is
16 impractical to bring all members of the CALIFORNIA CLASS before the
17 Court;

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

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

26 (f) There is a community of interest in ensuring that the combined assets of
27 DEFENDANT are sufficient to adequately compensate the members of
28

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

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

16
17 **THE CALIFORNIA LABOR SUB-CLASS**

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

26 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
28

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to correctly wages for all time
3 worked and failed to correctly calculate meal and rest premium pay for meal and rest period
4 violations suffered by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to
6 perform this work and permitted or suffered to permit this work. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

14 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 overtime compensation to members of the CALIFORNIA LABOR SUB-
20 CLASS in violation of the California Labor Code and California
21 regulations and the applicable California Wage Order;
- 22 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
23 entitled to overtime compensation for overtime worked under the overtime
24 pay requirements of California law;
- 25 (c) Whether DEFENDANT failed to accurately record the applicable
26 overtime rates for all overtime worked PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS;

- 1 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with legally
3 required uninterrupted thirty (30) minute meal breaks and rest periods;
4 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate
6 itemized wage statements;
7 (f) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;
9 (g) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,
11 (h) Whether DEFENDANT's conduct was willful.

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

- 14 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
15 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
16 CLASS the correct overtime pay for which DEFENDANT is liable
17 pursuant to Cal. Lab. Code § 1194 & § 1198;
18 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
19 accurately pay PLAINTIFF and the members of the CALIFORNIA
20 LABOR SUB-CLASS the correct minimum wage pay for which
21 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
22 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
23 PLAINTIFF and the other members of the CALIFORNIA CLASS with
24 all the correct pay for meal period violations and the legally required rest
25 breaks;
26 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
28

1 itemized statement in writing showing all accurate and applicable
2 overtime rates in effect during the pay period and the corresponding
3 amount of time worked at each overtime rate by the employee;

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

10 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
11 the CALIFORNIA CLASS members with necessary expenses incurred in
12 the discharge of their job duties.

13 40. This Class Action meets the statutory prerequisites for the maintenance of a Class
14 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
16 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
17 Members is impracticable and the disposition of their claims as a class
18 will benefit the parties and the Court;

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

23 (c) The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
25 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
26 was a non-exempt employee paid on an hourly basis and paid additional
27 non-discretionary incentive wages who was subjected to the
28

1 DEFENDANT's practice and policy which failed to pay the correct rate
2 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for
3 all overtime worked. PLAINTIFF sustained economic injury as a result
4 of DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive, unfair and pervasive
7 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the parties
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28

1 matter be dispositive of interests of the other members not party to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests.

4 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
5 or refused to act on grounds generally applicable to the CALIFORNIA
6 LABOR SUB-CLASS, making appropriate class-wide relief with respect
7 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
8 DEFENDANT uniformly failed to pay all wages due. Including the
9 correct overtime rate, for all overtime worked by the members of the
10 CALIFORNIA LABOR SUB-CLASS as required by law;

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

- 18 1) The interests of the members of the CALIFORNIA LABOR SUB-
19 CLASS in individually controlling the prosecution or defense of
20 separate actions in that the substantial expense of individual
21 actions will be avoided to recover the relatively small amount of
22 economic losses sustained by the individual CALIFORNIA
23 LABOR SUB-CLASS Members when compared to the substantial
24 expense and burden of individual prosecution of this litigation;
- 25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
28

1 individual members of the CALIFORNIA LABOR SUB-
2 CLASS, which would establish incompatible standards of
3 conduct for the DEFENDANT; and/or,

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

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

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

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

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

26 (b) A Class Action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the CALIFORNIA
28

1 LABOR SUB-CLASS because in the context of employment litigation a
2 substantial number of individual CALIFORNIA LABOR SUB-CLASS
3 Members will avoid asserting their rights individually out of fear of
4 retaliation or adverse impact on their employment;

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

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

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

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

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

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

1 (i) Class treatment provides manageable judicial treatment calculated to bring
2 a efficient and rapid conclusion to all litigation of all wage and hour
3 related claims arising out of the conduct of DEFENDANT as to the
4 members of the CALIFORNIA LABOR SUB-CLASS.
5

6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

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

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

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

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

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

23 Cal. Bus. & Prof. Code § 17203.

24 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 204, 206.5, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 2802,
28

1 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
2 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
3 unfair competition, including restitution of wages wrongfully withheld.

4 47. By the conduct alleged herein, DEFENDANT's practices were unlawful and
5 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
6 unscrupulous or substantially injurious to employees, and were without valid justification or
7 utility for which this Court should issue equitable and injunctive relief pursuant to Section
8 17203 of the California Business & Professions Code, including restitution of wages wrongfully
9 withheld.

10 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
11 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
12 other members of the CALIFORNIA CLASS, minimum, overtime, and reporting time wages
13 due for all time worked, failed to accurately to record the applicable rate of all overtime worked,
14 and failed to provide the required amount of overtime compensation due to a systematic
15 miscalculation of the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab.
16 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
17 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
18 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

19 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
21 other members of the CALIFORNIA CLASS to be underpaid during their employment with
22 DEFENDANT.

23 50. By the conduct alleged herein, DEFENDANT's practices were also unfair and
24 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
25 the correct meal period premiums for meal period violations and failed to provide mandatory
26 rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

27 51. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
28

1 CALIFORNIA CLASS member, one (1) hour at their regular rate of pay for each workday in
2 which an off-duty meal period was not timely provided for each five (5) hours of work, and/or
3 one (1) hour at their regular rate of pay for each workday in which a second off-duty meal
4 period was not timely provided for each ten (10) hours of work.

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

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

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

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

24 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
26 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
27 engaging in any unlawful and unfair business practices in the future.

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

8
9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

13 **and Against All Defendants)**

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

17 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
20 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
21 CALIFORNIA CLASS Members.

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

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

27 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28

1 including minimum wage compensation and interest thereon, together with the costs of suit.

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

7 64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
9 result of implementing a uniform policy and practice that denies accurate compensation to
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
11 minimum wage pay.

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

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

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

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

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

3 69. 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 70. In performing the acts and practices herein alleged in violation of California labor
11 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
12 all time worked and provide them with the requisite compensation, DEFENDANT acted and
13 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
15 their legal rights, or the consequences to them, and with the despicable intent of depriving them
16 of their property and legal rights, and otherwise causing them injury in order to increase
17 company profits at the expense of these employees.

18 71. 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
21 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
22 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
23 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
24 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
25 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
26 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
27 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
28

1 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION

**For Failure To Pay Overtime Compensation
[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

72. 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.

73. 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 the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT’s 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.

74. 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.

75. 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 amounts specified by law.

76. 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

1 fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

25 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
2 to a valid collective bargaining agreement that would preclude the causes of action contained
3 herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of himself and the
4 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
5 non-waiveable rights provided by the State of California.

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

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

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

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

1 applicable overtime rate.

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

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

22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION
For Failure to Provide Required Meal Period Premium Pay
[Cal. Lab. Code §§ 226.7 & 512]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

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

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

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

26 91. As a proximate result of the aforementioned violations, PLAINTIFF and
27 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
28

1 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
2 suit.

3
4 **FIFTH CAUSE OF ACTION**

5 **For Failure to Provide Required Rest Periods**

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

5
6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

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

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

14 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

18 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
19 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
21 benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
22 CLASS members for expenses which include, but are not limited to, costs related to using their
23 personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's
24 uniform policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA
25 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
26 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
27 These expenses are necessary to complete their principal job duties. DEFENDANT is estopped

1 by DEFENDANT’s conduct to assert any waiver of this expectation. Although these expenses
2 are necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 members, DEFENDANT fails to indemnify and reimburse PLAINTIFF and the CALIFORNIA
4 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
5 laws and regulations of California.

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

10
11 **SEVENTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 226]**

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

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

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

21 (1) gross wages earned,

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

26 (3) the number of piecerate units earned and any applicable piece rate if the employee
27 is paid on a piece-rate basis,
28

- 1 (4) all deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item,
3 (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid,
5 (7) the name of the employee and his or her social security number, except that by
6 January 1, 2008, only the last four digits of his or her social security number or an
7 employee identification number other than a social security number may be shown on
8 the itemized statement,
9 (8) the name and address of the legal entity that is the employer, and
10 (9) all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee.

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

27 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
28

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

11 ///

12 ///

13 ///

14

15

EIGHTH CAUSE OF ACTION

16

For Failure to Pay Wages When Due

17

[Cal. Lab. Code §§ 201, 202, 203]

18

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

19

Defendants)

20

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

23

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

24

As used in this article:

25

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

26

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

28

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

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

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

15 108. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
16 SUB-CLASS Members’ employment contract.

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

1 severally, as follows:

2 1. On behalf of the CALIFORNIA CLASS:

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

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

- 14 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and
15 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
16 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 17 B) Compensatory damages, according to proof at trial, including compensatory
18 damages for minimum wage, reporting time pay and overtime compensation
19 due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
21 plus interest thereon at the statutory rate;
- 22 C) Meal and rest period compensation pursuant to California Labor Code Section
23 226.7 and the applicable IWC Wage Order;
- 24 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
25 period in which a violation occurs and one hundred dollars (\$100) per each
26 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
27 subsequent pay period, not exceeding an aggregate penalty of four thousand
28

- 1 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
2 E) The wages of all terminated employees from the CALIFORNIA LABOR
3 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
4 or until an action therefore is commenced, in accordance with Cal. Lab. Code
5 § 203;
6 F) For liquidated damages pursuant to California Labor Code Sections 1194.2
7 and 1197; and,
8 G) The amount of the expenses PLAINTIFF and each member of the
9 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
10 plus interest, and costs of suit.

- 11 3. On all claims:
12 A) An award of interest, including prejudgment interest at the legal rate;
13 B) Such other and further relief as the Court deems just and equitable; and,
14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
15 including, but not limited to, pursuant to Labor Code §218.5, §226, §1194 and/or
16 §2802.

17
18 Dated: July 24, 2019

ZAKAY LAW GROUP, APLC

19
20
21 By: 
22 Shani O. Zakay
23 Attorneys for Plaintiff
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: July 24, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorneys for Plaintiff