

**SUMMONS  
(CITACION JUDICIAL)**

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

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

ASH'S FIRST LLC, a California Limited Liability Company; NYRN MANAGEMENT LLC, a California Limited Liability Company; SCZZ COLLECTIVE, INC. dba UPNORTH, a California Corporation; AREA 29 LLC dba Off The Charts, a California Limited Liability Company; and DOES 1 through 50, inclusive,

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

ALEXA LOWE, an individual, on behalf of herself and on behalf of all persons similarly situated,

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/16/2022 at 03:59:26 PM**  
Clerk of the Superior Court  
By Mariejo Guyot, Deputy Clerk

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

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

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

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

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

San Diego Superior Court  
330 W Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2022-00010114-CU-OE-CTL  
(Número del Caso):

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 03/17/2022  
(Fecha)

Clerk, by \_\_\_\_\_  
(Secretario)

*m. M. Guyot*  
M. Guyot

\_\_\_\_\_, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**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**  
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3 Jackland K. Hom (State Bar #327243)  
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21 Attorneys for Plaintiff ALEXA LOWE

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **IN AND FOR THE COUNTY OF SAN DIEGO**

24 ALEXA LOWE, an individual, on behalf of  
25 herself and on behalf of all persons similarly  
26 situated,

27 Plaintiff,

28 vs.

29 ASH'S FIRST LLC, a California Limited  
30 Liability Company; NYRN MANAGEMENT  
31 LLC, a California Limited Liability Company;  
32 SCZZ COLLECTIVE, INC. dba UPNORTH, a  
33 California Corporation; AREA 29 LLC dba Off  
34 The Charts, a California Limited Liability  
35 Company; and DOES 1 through 50, inclusive,

36 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**03/16/2022** at 03:59:26 PM

Clerk of the Superior Court  
By Mariejo Guyot, Deputy Clerk

Case No. **37-2022-00010114-CU-OE-CTL**

**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;

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6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
  7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
  8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
  9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

**DEMAND FOR JURY TRIAL**

10 Plaintiff Alexa Lowe (“PLAINTIFF”), an individual, on behalf of herself and all other similarly  
11 situated current and former employees alleges on information and belief, except for her own acts and  
12 knowledge which are based on personal knowledge, the following:

13 **THE PARTIES**

14 1. Defendant Ash’s First LLC (“Defendant Ash’s First”) is a California limited liability  
15 company that at all relevant times mentioned herein conducted and continues to conduct substantial  
16 business in the state of California.

17 2. Defendant NYRN Management LLC (“Defendant NYRN”) is a California limited liability  
18 company that at all relevant times mentioned herein conducted and continues to conduct substantial  
19 business in the state of California.

20 3. Defendant SCZZ COLLECTIVE, INC. dba UPNORTH (“Defendant SCZZ”) is a  
21 California corporation that at all relevant times mentioned herein conducted and continues to conduct  
22 substantial business in the state of California.

23 4. Defendant Area 29 LLC (“Defendant Area 29”) is a California limited liability company  
24 that at all relevant times mentioned herein conducted and continues to conduct substantial business in  
25 the state of California.

26 5. Defendant Ash’s First, Defendant NYRN, Defendant SCZZ and Defendant Area 29 were  
27 the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the  
28

1 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the  
2 conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or  
3 “DEFENDANT.”

4 6. DEFENDANTS produce, harvest, and operate retail stores for the sale of cannabis  
5 products.

6 7. PLAINTIFF was employed by DEFENDANTS in California from May of 2021 to  
7 September of 2021 and was at all times classified by DEFENDANTS as a non-exempt employee, paid  
8 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum  
9 and overtime wages due for all time worked.

10 8. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined  
11 as all individuals who are or previously were employed by Defendant Ash’s First and/or Defendant  
12 NYRN and/or Defendant SCZZ and/or Defendant Area 29 in California and classified as non-exempt  
13 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior  
14 to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA  
15 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
16 Members is under five million dollars (\$5,000,000.00).

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

27 10. The true names and capacities, whether individual, corporate, subsidiary, partnership,  
28 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to

1 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.  
2 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities  
3 of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and  
4 based upon that information and belief alleges, that the Defendants named in this Complaint, including  
5 DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and  
6 happenings that proximately caused the injuries and damages hereinafter alleged.

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

#### 14 THE CONDUCT

15 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required  
16 to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time  
17 during which an employee is subject to the control of an employer, including all the time the employee  
18 is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS  
19 Members to work without paying them for all the time they were under DEFENDANT's control.  
20 Among other things, DEFENDANT required PLAINTIFF to work while clocked out during what was  
21 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by  
22 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
23 Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF and CALIFORNIA  
24 CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment,  
25 required these employees to work after clocking out for the day by cleaning communal areas and waiting  
26 ten to fifteen minutes until DEFENDANT'S supervisors allowed PLAINTIFF and CALIFORNIA  
27 CLASS Members to leave the premises. As a result, PLAINTIFF and other CALIFORNIA CLASS  
28 Members forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working

1 without their time being correctly recorded and without compensation at the applicable rates.  
2 DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
3 for all time worked, is evidenced by DEFENDANT's business records.

4 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick**  
5 **Pay**

6 13. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
7 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their  
8 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,  
9 PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them without  
10 compensation at the correct overtime and double time rates, meal and rest period premiums, and sick  
11 pay rates. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members  
12 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay  
13 in accordance with applicable law is evidenced by DEFENDANTS' business records.

14 14. State law provides that employees must be paid overtime at one-and-one-half times their  
15 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at an  
16 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

17 15. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'  
18 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and  
19 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-  
20 discretionary bonus program provided all employees paid on an hourly basis with bonus compensation  
21 when the employees met the various performance goals set by DEFENDANTS.

22 16. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods  
23 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid  
24 meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus,  
25 DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the  
26 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime  
27 hours worked. Management and supervisors described the incentive/bonus program to potential and  
28 new employees as part of the compensation package. As a matter of law, the incentive compensation

1 received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular  
2 rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double  
3 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other  
4 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code Section 246  
5 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular  
6 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the  
7 employee actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein,  
8 by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick  
9 pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable  
10 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

21 **B. Meal Period Violations**

22 18. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
23 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and  
24 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS  
25 Members were required from time to time to perform work as ordered by DEFENDANT for more than  
26 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to  
27 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal  
28 period for some workdays in which these employees were required by DEFENDANT to work ten (10)

1 hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal  
2 breaks without additional compensation and in accordance with DEFENDANT's corporate policy and  
3 practice.

4 **C. Rest Period Violations**

5 19. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA  
6 CLASS Members were also required from time to time to work in excess of four (4) hours without  
7 being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods  
8 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time,  
9 a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and  
10 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes  
11 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other  
12 CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.  
13 Additionally, the applicable California Wage Order requires employers to provide employees with off-  
14 duty rest periods, which the California Supreme Court defined as time during which an employee is  
15 relieved from all work-related duties and free from employer control. In so doing, the Court held that  
16 the requirement under California law that employers authorize and permit all employees to take rest  
17 period means that employers must relieve employees of all duties and relinquish control over how  
18 employees spend their time which includes control over the locations where employees may take their  
19 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five  
20 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other  
21 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's  
22 rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work  
23 premises during their rest period.

24 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

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



1 the time during which an employee was subject to the control of an employer, including all the time the  
2 employee was permitted or suffered to permit this work DEFENDANT required these employees to  
3 work off the clock without paying them for all the time they were under DEFENDANT's control. As  
4 such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS were under compensated for all time worked. As a result, PLAINTIFF and other  
6 CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately  
7 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the  
8 extent that the time worked off the clock does not qualify for overtime premium payment,  
9 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.  
10 Code §§ 1194, 1197, and 1197.1.

11 21. DEFENDANT was able to track the amount of time PLAINTIFF and the other members  
12 of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay  
13 PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all  
14 the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

15 **E. Wage Statement Violations**

16 22. California Labor Code Section 226 requires an employer to furnish its employees an  
17 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the  
18 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned,  
19 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and  
20 only the last four digits of the employee's social security number or an employee identification number  
21 other than a social security number, (8) the name and address of the legal entity that is the employer  
22 and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of  
23 hours worked at each hourly rate by the employee.

24 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal  
26 and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide  
27 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements  
28 which failed to show, among other things, the total hours worked and all applicable hourly rates in effect

1 during the pay period and the corresponding amount of time worked at each hourly rate, and correct  
2 rates of pay for penalty payments or missed meal and rest periods. Aside, from the violations listed  
3 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
4 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time  
5 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage  
6 statements which violated Cal. Lab. Code § 226.

7 **F. Violations for Untimely Payment of Earned Wages**

8 24. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed  
9 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid  
10 not more than seven calendar days following the close of the payroll period.

11 Cal. Lab. Code § 210 provides:

12 [I]n addition to, and entirely independent and apart from, any other penalty provided in  
13 this article, every person who fails to pay the wages of each employee as provided in  
14 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial  
15 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)  
17 for each failure to pay each employee, plus 25 percent of the amount unlawfully  
18 withheld.

19 25. DEFENDANT from time to time failed to pay PLAINTIFF and members of the  
20 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period  
21 in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro” wage payment.

22 **G. Violations for Failure to Pay Wages When Due**

23 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and Other  
24 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties  
25 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based  
26 thereon alleges that such failure was willful, such that PLAINTIFF and members of the CALIFORNIA  
27 CLASS whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab.  
28 Code Sections 201-203.

**H. Unlawful Deductions Violations**

27 27. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect  
28 or receive from an employee any part of wages theretofore paid by said employer to said employee.”

1 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA CLASS  
2 Members, made unlawful deductions from compensation payable to PLAINTIFF and CALIFORNIA  
3 CLASS Members, failed to disclose all aspects of the deductions from compensation payable to  
4 PLAINTIFF and CALIFORNIA CLASS Members, and thereby failed to pay these employees all wages  
5 due at each applicable pay period and upon termination. PLAINTIFF and members of the  
6 CALIFORNIA CLASS seek recovery of all illegal deductions from wages according to proof, related  
7 penalties, interest, attorney fees and costs.

8 **I. Unreimbursed Business Expenses**

9 28. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
10 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by  
11 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their  
12 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required  
13 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
14 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
15 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his  
16 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless  
17 the employee, at the time of obeying the directions, believed them to be unlawful."

18 29. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
19 Members as a business expense, were required by DEFENDANT to use their own personal cellular  
20 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not  
21 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal  
22 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA  
23 CLASS Members were required by DEFENDANT to use their personal cellular phones for work-related  
24 tasks. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other  
25 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but  
26 were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
27 benefit of DEFENDANT.

1  
2 **J. Suitable Seating Violations**

3 30. PLAINTIFF further alleges that the station counters in DEFENDANT's stores provide  
4 ample space behind each counter area to allow for the presence and use of a stool or seat by  
5 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's employees'  
6 working at DEFENDANT's stores spend a very substantial portion, and, in many workdays, the vast  
7 majority of their working time behind these counters. The nature of the position can reasonably be  
8 accomplished while using a seat/stool.

9 31. In violation of the applicable sections of the California Labor Code and the requirements  
10 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of  
11 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide  
12 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'  
13 work reasonably permitted sitting.

14 32. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved  
15 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the  
16 performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not  
17 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct  
18 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor  
19 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

20 33. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required  
21 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code  
22 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did  
23 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and  
24 also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of  
25 the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of  
26 PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure  
27 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business  
28

1 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
2 \$75,000.

### 3 **JURISDICTION AND VENUE**

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

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

### 13 **THE CALIFORNIA CLASS**

14 36. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
15 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,  
16 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who  
17 are or previously were employed by Defendant Ash's First and/or Defendant NYRN and/or Defendant  
18 SCZZ and/or Defendant Area 29 in California and classified as non-exempt employees (the  
19 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of  
20 this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS  
21 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is  
22 under five million dollars (\$5,000,000.00).

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

25 38. DEFENDANT, as a matter of company policy, practice and procedure, and in violation  
26 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and  
27 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a  
28 practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and

1 other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,  
2 required employees to perform this work and permits or suffers to permit this work.

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

11 40. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS  
12 Members is impracticable.

13 41. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 14 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§  
15 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in  
16 place company policies, practices and procedures that failed to record and pay  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time  
18 worked, including minimum wages owed and overtime wages owed for work  
19 performed by these employees; and,  
20 b. Committing an act of unfair competition in violation of the UCL, by failing to  
21 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with  
22 the legally required meal and rest periods.

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

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

- 1                   b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
2                   raised in this Complaint are common to the CALIFORNIA CLASS will apply to  
3                   every member of the CALIFORNIA CLASS;
- 4                   c. The claims of the representative PLAINTIFF are typical of the claims of each  
5                   member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
6                   the CALIFORNIA CLASS, was classified as a nonexempt employee paid on an  
7                   hourly basis who was subjected to the DEFENDANT's deceptive practice and  
8                   policy which failed to provide the legally required meal and rest periods to the  
9                   CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and  
10                  CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of  
11                  DEFENDANT's employment practices. PLAINTIFF and the members of the  
12                  CALIFORNIA CLASS were and are similarly or identically harmed by the same  
13                  unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- 14                  d. The representative PLAINTIFF will fairly and adequately represent and protect the  
15                  interest of the CALIFORNIA CLASS, and has retained counsel who are competent  
16                  and experienced in Class Action litigation. There are no material conflicts between  
17                  the claims of the representative PLAINTIFF and the members of the  
18                  CALIFORNIA CLASS that would make class certification inappropriate. Counsel  
19                  for the CALIFORNIA CLASS will vigorously assert the claims of all  
20                  CALIFORNIA CLASS Members.

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

- 23                  a. Without class certification and determination of declaratory, injunctive, statutory  
24                  and other legal questions within the class format, prosecution of separate actions  
25                  by individual members of the CALIFORNIA CLASS will create the risk of:
- 26                          1. Inconsistent or varying adjudications with respect to individual members of the  
27                          CALIFORNIA CLASS which would establish incompatible standards of  
28                          conduct for the parties opposing the CALIFORNIA CLASS; and/or,

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

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

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

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

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





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

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

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

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

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

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

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

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

24 45. DEFENDANT maintains records from which the Court can ascertain and identify by job  
25 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's  
26 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the  
27 Complaint to include any additional job titles of similarly situated employees when they have been  
28 identified. THE CALIFORNIA LABOR SUB-CLASS.PLAINTIFF further brings the Second, Third,

1 Fourth, Fifth, Sixth, Seventh, and Eighth causes Action on behalf of a California sub-class, defined as all  
2 members of the CALIFORNIA CLASS who are or previously were employed by Defendant Ash's First  
3 and/or Defendant NYRN and/or Defendant SCZZ and/or Defendant Area 29 in California and classified  
4 as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period  
5 three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the  
6 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The  
7 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is  
8 under five million dollars (\$5,000,000.00).

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

19 47. DEFENDANT maintains records from which the Court can ascertain and identify by name  
20 and job title, each of DEFENDANT's employees who have been intentionally subjected to  
21 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek  
22 leave to amend the complaint to include any additional job titles of similarly situated employees when  
23 they have been identified.

24 48. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
25 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

26 49. Common questions of law and fact exist as to members of the CALIFORNIA LABOR  
27 SUB-CLASS, including, but not limited, to the following:  
28

- a. Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUBCLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages

1 due without abatement, by failing to tender full payment and/or restitution of wages  
2 owed or in the manner required by California law to the members of the CALIFORNIA  
3 LABOR SUB-CLASS who have terminated their employment; and,

4 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
5 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the  
6 discharge of their job duties.

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

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

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

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

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

1 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims  
2 of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 5 a. Without class certification and determination of declaratory, injunctive, statutory and  
6 other legal questions within the class format, prosecution of separate actions by  
7 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 8 1. Inconsistent or varying adjudications with respect to individual members of the  
9 CALIFORNIA LABOR SUB-CLASS which would establish incompatible  
10 standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-  
11 CLASS; or,
  - 12 2. Adjudication with respect to individual members of the CALIFORNIA LABOR  
13 SUB-CLASS which would as a practical matter be dispositive of interests of the  
14 other members not party to the adjudication or substantially impair or impede  
15 their ability to protect their interests.
- 16 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to  
17 act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS,  
18 making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-  
19 CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct  
20 wages for all time worked by the members of the CALIFORNIA LABOR SUBCLASS  
21 as required by law;
- 22 c. Common questions of law and fact predominate as to the members of the CALIFORNIA  
23 LABOR SUB-CLASS, with respect to the practices and violations of California Law as  
24 listed above, and predominate over any question affecting only individual  
25 CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other  
26 available methods for the fair and efficient adjudication of the controversy, including  
27 consideration of:  
28

- 1 1. The interests of the members of the CALIFORNIA LABOR SUBCLASS in  
2 individually controlling the prosecution or defense of separate actions in that the  
3 substantial expense of individual actions will be avoided to recover the relatively  
4 small amount of economic losses sustained by the individual CALIFORNIA  
5 LABOR SUB-CLASS Members when compared to the substantial expense and  
6 burden of individual prosecution of this litigation;
- 7 2. Class certification will obviate the need for unduly duplicative litigation that  
8 would create the risk of:
  - 9 A. Inconsistent or varying adjudications with respect to individual  
10 members of the CALIFORNIA LABOR SUBCLASS, which would  
11 establish incompatible standards of conduct for the DEFENDANT;  
12 and/or,
  - 13 B. Adjudications with respect to individual members of the  
14 CALIFORNIA LABOR SUB-CLASS would as a practical matter be  
15 dispositive of the interests of the other members not parties to the  
16 adjudication or substantially impair or impede their ability to protect their  
17 interests;
- 18 3. In the context of wage litigation because a substantial number of individual  
19 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal  
20 rights out of fear of retaliation by DEFENDANT, which may adversely affect an  
21 individual's job with DEFENDANT or with a subsequent employer, the Class  
22 Action is the only means to assert their claims through a representative; and,
- 23 4. A class action is superior to other available methods for the fair and efficient  
24 adjudication of this litigation because class treatment will obviate the need for  
25 unduly and unnecessary duplicative litigation that is likely to result in the absence  
26 of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 1 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS  
2 predominate over any question affecting only individual CALIFORNIA LABOR SUB-  
3 CLASS Members;
- 4 b. A Class Action is superior to any other available method for the fair and efficient  
5 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS  
6 because in the context of employment litigation a substantial number of individual  
7 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights  
8 individually out of fear of retaliation or adverse impact on their employment;
- 9 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is  
10 impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the  
11 Court;
- 12 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be  
13 able to obtain effective and economic legal redress unless the action is maintained as a  
14 Class Action;
- 15 e. There is a community of interest in obtaining appropriate legal and equitable relief for  
16 the acts of unfair competition, statutory violations and other improprieties, and in  
17 obtaining adequate compensation for the damages and injuries which DEFENDANT's  
18 actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- 19 f. There is a community of interest in ensuring that the combined assets of DEFENDANT  
20 are sufficient to adequately compensate the members of the CALIFORNIA LABOR  
21 SUB-CLASS for the injuries sustained;
- 22 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
23 CALIFORNIA LABOR SUB-CLASS, thereby making final class wide relief  
24 appropriate with respect to the CALIFORNIA LABOR SUBCLASS as a whole;
- 25 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable  
26 from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS  
27 consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in  
28 California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,



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

5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

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

11 55. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §  
12 17021.

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

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

23 Cal. Bus. & Prof. Code § 17203.

24 57. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a  
25 business practice which violates California law, including but not limited to, the applicable Industrial  
26 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections  
27 201, 202, 203, 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802, for which this Court  
28 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may  
be necessary to prevent and remedy the conduct held to constitute unfair competition, including  
restitution of wages wrongfully withheld.

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

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

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

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

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

25           63. PLAINTIFF further demands on behalf of herself and each member of the CALIFORNIA  
26 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was  
27 not timely provided as required by law.

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

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

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

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

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

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

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

9           78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,  
10 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without  
11 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA  
12 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR  
13 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all  
14 earned wages.

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

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

26           81. In performing the acts and practices herein alleged in violation of California labor laws,  
27 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time  
28 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act

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

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

22 84. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a  
23 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the  
24 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
25 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve  
26 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

8           88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT  
10 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

18           90. In committing these violations of the California Labor Code, DEFENDANT inaccurately  
19 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other  
20 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the  
21 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial  
22 Welfare Commission requirements and other applicable laws and regulations.

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

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

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

5 93. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other  
6 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they  
7 are entitled to, constituting a failure to pay all earned wages.

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

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

19 96. DEFENDANT knew or should have known that PLAINTIFF and the other members of  
20 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.  
21 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay  
22 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT  
23 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA  
24 LABOR SUB-CLASS for overtime worked.

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



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

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

15 **FOURTH CAUSE OF ACTION**

16 **For Failure to Provide Required Meal Periods**

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

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

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

21 100. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to  
22 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA  
23 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not  
25 prevent these employees from being relieved of all of their duties for the legally required off-duty meal  
26 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR  
27 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their  
28 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA

1 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work  
2 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to  
3 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some  
4 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work  
5 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-  
6 CLASS therefore forfeited meal breaks without additional compensation and in accordance with  
7 DEFENDANT's strict corporate policy and practice.

8 101. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC  
9 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members  
10 who were not provided a meal period, in accordance with the applicable Wage Order, one additional  
11 hour of compensation at each employee's regular rate of pay for each workday that a meal period was  
12 not provided.

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

22 104. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to  
23 time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
24 Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes  
25 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten  
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third  
27 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to  
28 time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided

1 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
2 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by  
3 DEFENDANT and DEFENDANT's managers.

4 105. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC  
5 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members  
6 who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour  
7 of compensation at each employee's regular rate of pay for each workday that rest period was not  
8 provided.

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

16 107. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege  
17 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

- 20 (1) gross wages earned,  
21 (2) total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment of overtime under  
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,  
24 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid  
25 on a piece-rate basis,  
26 (4) all deductions, provided that all deductions made on written orders of the  
27 employee may be aggregated and shown as one item,  
28 (5) net wages earned,  
(6) the inclusive dates of the period for which the employee is paid,  
(7) the name of the employee and his or her social security number, except that by  
January 1, 2008, only the last four digits of his or her social security number or an  
employee identification number other than a social security number may be shown on  
the itemized statement,  
(8) the name and address of the legal entity that is the employer, and  
(9) all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee.

1  
2 109. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members  
3 of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed  
4 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that  
5 every employer shall furnish each of his or her employees with an accurate itemized wage statement in  
6 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during  
7 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the  
8 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage  
9 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
10 DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA  
11 LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

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

1 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

6 113. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to  
7 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for  
8 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.  
9 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members  
10 for expenses which included, but were not limited to, costs related to using their personal cellular phones  
11 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA  
12 LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones  
13 in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse  
14 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using  
15 their personal cellular phones for DEFENDANT within the course and scope of their employment for  
16 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is  
17 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses  
18 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
19 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
20 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and  
21 regulations of California.

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

5 115. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege  
6 and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 116. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

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

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

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

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

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

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

23 119. Cal. Lab. Code § 203 provides, in relevant part, that:

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



1 employees in California during the time period of January 7, 2021 until the present (the "AGGRIEVED  
2 EMPLOYEES").

3 125. On January 7, 2022, PLAINTIFF gave written notice by certified mail to the Labor and  
4 Workforce Development Agency (the "Agency") and the employer of the specific provisions of this  
5 code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto  
6 and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these  
7 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now  
8 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State  
9 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 126. The policies, acts and practices heretofore described were and are an unlawful business act  
11 or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other  
12 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of  
13 the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory  
14 meal breaks and rest breaks, (d) failed to pay meal and rest break premiums at the correct rate, and (e)  
15 failed to timely pay wages at the correct rate, all in violation of the applicable Labor Code sections listed  
16 in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,  
17 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,  
18 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory  
19 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed  
20 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California  
21 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,  
24 as follows:

25 1. On behalf of the CALIFORNIA CLASS:

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

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



- 1 C. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from  
2 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,  
3 D. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for  
4 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the  
5 other members of the CALIFORNIA CLASS.

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

- 7 A. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of  
8 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal.  
9 Code of Civ. Proc. § 382;
- 10 B. Compensatory damages, according to proof at trial, including compensatory damages for  
11 minimum and overtime compensation due PLAINTIFF and the other members of the  
12 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
13 CLASS PERIOD plus interest thereon at the statutory rate;
- 14 C. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
15 violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA  
16 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an  
17 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal.  
18 Lab. Code § 226;
- 19 D. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the  
20 applicable IWC Wage Order;
- 21 E. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 22 F. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR  
23 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- 24 G. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a  
25 penalty from the due date thereof at the same rate until paid or until an action therefore is  
26 commenced, in accordance with Cal. Lab. Code § 203.
- 27  
28

- 1 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:  
2 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of  
3 2004;  
4 4. On all claims:  
5 A. An award of interest, including prejudgment interest at the legal rate;  
6 B. Such other and further relief as the Court deems just and equitable; and,  
7 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including,  
8 but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.  
9

10 Dated: March 16, 2022

Respectfully Submitted,  
ZAKAY LAW GROUP, APLC


11  
12   
13 By: \_\_\_\_\_  
Shani O. Zakay  
Attorneys for PLAINTIFF  
14

15  
16  
17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF demands a jury trial on all issues triable to a jury.  
19

20 Dated: March 16, 2022

Respectfully Submitted,  
ZAKAY LAW GROUP, APLC

21  
22   
23 By: \_\_\_\_\_  
Shani O. Zakay  
Attorneys for PLAINTIFF  
24

# **EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #45001

January 7, 2022

**Via Online Filing to LWDA and Certified Mail to Defendants**  
**Labor and Workforce Development Agency**  
Online Filing

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| <b>ASH'S FIRST LLC</b><br>c/o Sean D. Maddocks<br>23 Corporate Plaza Drive, Suite 150<br>Newport Beach, CA 92660<br><i>Sent Via Certified Mail &amp; Return Receipt</i><br><i>No. 7021 2720 0000 9972 6402</i> | <b>SCZZ COLLECTIVE, INC. dba UPNORTH</b><br>c/o Quintin Shammam<br>1093 East Main Street, #243<br>El Cajon, CA 92020<br><i>Sent Via Certified Mail &amp; Return Receipt</i><br><i>No. 7021 2720 0000 9972 6396</i> |
| <b>NYRN MANAGEMENT LLC</b><br>c/o Norman Yousif<br>1093 East Main Street, #243<br>El Cajon, CA 92020<br><i>Sent Via Certified Mail &amp; Return Receipt</i><br><i>No. 7021 2720 0000 9972 6389</i>             | <b>AREA 29 LLC dba OFF THE CHARTS</b><br>c/o Norman Yousif<br>1336 Granite Hills Drive<br>El Cajon, CA 92019<br><i>Sent Via Certified Mail &amp; Return Receipt</i><br><i>No. 7021 2720 0000 9972 6372</i>         |

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, Cal. Code Regs., Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff ALEXA LOWE (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants ASH’S FIRST LLC (“Defendant Ash’s First”), NYRN MANAGEMENT LLC (“Defendant NYRN”), SCZZ COLLECTIVE, INC. dba UPNORTH (“Defendant SCZZ”), AREA 29 LLC dba OFF THE CHARTS (“Defendant Area 29”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California from May of 2021 to September of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendants failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210,

218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, Cal. Code Regs., Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Ash's First and/or Defendant NYRN and/or Defendant SCZZ and/or Defendant Area 29 in California during the relevant claim period.**

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay  
Attorney for Plaintiff

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Attorneys for Plaintiff ALEXA LOWE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

ALEXA LOWE, an individual, on behalf of herself and on behalf of all persons similarly situated,

Plaintiff,

vs.

ASH'S FIRST LLC, a California Limited Liability Company; NYRN MANAGEMENT LLC, a California Limited Liability Company; SCZZ COLLECTIVE, INC. dba UPNORTH, a California Corporation; AREA 29 LLC dba Off The Charts, a California Limited Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 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;

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- 6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
  - 7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
  - 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR JURY TRIAL**

8 Plaintiff Alexa Lowe (“PLAINTIFF”), an individual, on behalf of herself and all other similarly  
9 situated current and former employees alleges on information and belief, except for her own acts and  
10 knowledge which are based on personal knowledge, the following:

11 **THE PARTIES**

12 1. Defendant Ash’s First LLC (“Defendant Ash’s First”) is a California limited liability  
13 company that at all relevant times mentioned herein conducted and continues to conduct substantial  
14 business in the state of California.

15 2. Defendant NYRN Management LLC (“Defendant NYRN”) is a California limited liability  
16 company that at all relevant times mentioned herein conducted and continues to conduct substantial  
17 business in the state of California.

18 3. Defendant SCZZ COLLECTIVE, INC. dba UPNORTH (“Defendant SCZZ”) is a  
19 California corporation that at all relevant times mentioned herein conducted and continues to conduct  
20 substantial business in the state of California.

21 4. Defendant Area 29 LLC (“Defendant Area 29”) is a California limited liability company  
22 that at all relevant times mentioned herein conducted and continues to conduct substantial business in  
23 the state of California.

24 5. Defendant Ash’s First, Defendant NYRN, Defendant SCZZ and Defendant Area 29 were  
25 the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the  
26 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the  
27  
28

1 conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or  
2 “DEFENDANT.”

3 6. DEFENDANTS produce, harvest, and operate retail stores for the sale of cannabis  
4 products.

5 7. PLAINTIFF was employed by DEFENDANTS in California from May of 2021 to  
6 September of 2021 and was at all times classified by DEFENDANTS as a non-exempt employee, paid  
7 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum  
8 and overtime wages due for all time worked.

9 8. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined  
10 as all individuals who are or previously were employed by Defendant Ash’s First and/or Defendant  
11 NYRN and/or Defendant SCZZ and/or Defendant Area 29 in California and classified as non-exempt  
12 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior  
13 to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA  
14 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
15 Members is under five million dollars (\$5,000,000.00).

16 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS  
17 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the  
18 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to  
19 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an  
20 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to  
21 retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and  
22 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
23 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS who have been economically injured by DEFENDANT’s past and current  
25 unlawful conduct, and all other appropriate legal and equitable relief.

26 10. The true names and capacities, whether individual, corporate, subsidiary, partnership,  
27 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to  
28 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.



1 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities  
2 of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and  
3 based upon that information and belief alleges, that the Defendants named in this Complaint, including  
4 DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and  
5 happenings that proximately caused the injuries and damages hereinafter alleged.

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

### 13 **THE CONDUCT**

14 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required  
15 to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time  
16 during which an employee is subject to the control of an employer, including all the time the employee  
17 is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS  
18 Members to work without paying them for all the time they were under DEFENDANT's control.  
19 Among other things, DEFENDANT required PLAINTIFF to work while clocked out during what was  
20 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by  
21 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
22 Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF and CALIFORNIA  
23 CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment,  
24 required these employees to work after clocking out for the day by cleaning communal areas and waiting  
25 ten to fifteen minutes until DEFENDANT'S supervisors allowed PLAINTIFF and CALIFORNIA  
26 CLASS Members to leave the premises. As a result, PLAINTIFF and other CALIFORNIA CLASS  
27 Members forfeited minimum wage, overtime wage compensation, and off-duty meal breaks by working  
28 without their time being correctly recorded and without compensation at the applicable rates.

1 DEFENDANT’s policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
2 for all time worked, is evidenced by DEFENDANT’s business records.

3 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick**  
4 **Pay**

5 13. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
6 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their  
7 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,  
8 PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them without  
9 compensation at the correct overtime and double time rates, meal and rest period premiums, and sick  
10 pay rates. DEFENDANTS’ uniform policy and practice to not pay the CALIFORNIA CLASS members  
11 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay  
12 in accordance with applicable law is evidenced by DEFENDANTS’ business records.

13 14. State law provides that employees must be paid overtime at one-and-one-half times their  
14 “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were compensated at an  
15 hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

16 15. The second component of PLAINTIFF’S and other CALIFORNIA CLASS members’  
17 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and  
18 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-  
19 discretionary bonus program provided all employees paid on an hourly basis with bonus compensation  
20 when the employees met the various performance goals set by DEFENDANTS.

21 16. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods  
22 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid  
23 meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus,  
24 DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the  
25 employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime  
26 hours worked. Management and supervisors described the incentive/bonus program to potential and  
27 new employees as part of the compensation package. As a matter of law, the incentive compensation  
28 received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular

1 rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double  
2 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other  
3 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code Section 246  
4 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular  
5 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the  
6 employee actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein,  
7 by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick  
8 pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable  
9 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

20 **B. Meal Period Violations**

21 18. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
22 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and  
23 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS  
24 Members were required from time to time to perform work as ordered by DEFENDANT for more than  
25 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to  
26 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal  
27 period for some workdays in which these employees were required by DEFENDANT to work ten (10)  
28 hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal

1 breaks without additional compensation and in accordance with DEFENDANT's corporate policy and  
2 practice.

3 **C. Rest Period Violations**

4 19. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA  
5 CLASS Members were also required from time to time to work in excess of four (4) hours without  
6 being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods  
7 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time,  
8 a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and  
9 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes  
10 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other  
11 CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.  
12 Additionally, the applicable California Wage Order requires employers to provide employees with off-  
13 duty rest periods, which the California Supreme Court defined as time during which an employee is  
14 relieved from all work-related duties and free from employer control. In so doing, the Court held that  
15 the requirement under California law that employers authorize and permit all employees to take rest  
16 period means that employers must relieve employees of all duties and relinquish control over how  
17 employees spend their time which includes control over the locations where employees may take their  
18 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five  
19 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other  
20 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's  
21 rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work  
22 premises during their rest period.

23 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

24 20. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record  
25 and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these  
26 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
27 required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning  
28 the time during which an employee was subject to the control of an employer, including all the time the

1 employee was permitted or suffered to permit this work DEFENDANT required these employees to  
2 work off the clock without paying them for all the time they were under DEFENDANT's control. As  
3 such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS were under compensated for all time worked. As a result, PLAINTIFF and other  
5 CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately  
6 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the  
7 extent that the time worked off the clock does not qualify for overtime premium payment,  
8 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.  
9 Code §§ 1194, 1197, and 1197.1.

10 21. DEFENDANT was able to track the amount of time PLAINTIFF and the other members  
11 of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay  
12 PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all  
13 the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

14 **E. Wage Statement Violations**

15 22. California Labor Code Section 226 requires an employer to furnish its employees an  
16 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the  
17 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned,  
18 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and  
19 only the last four digits of the employee's social security number or an employee identification number  
20 other than a social security number, (8) the name and address of the legal entity that is the employer  
21 and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of  
22 hours worked at each hourly rate by the employee.

23 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
24 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal  
25 and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide  
26 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements  
27 which failed to show, among other things, the total hours worked and all applicable hourly rates in effect  
28 during the pay period and the corresponding amount of time worked at each hourly rate, and correct

1 rates of pay for penalty payments or missed meal and rest periods. Aside, from the violations listed  
2 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
3 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time  
4 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage  
5 statements which violated Cal. Lab. Code § 226.

6 **F. Violations for Untimely Payment of Earned Wages**

7 24. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed  
8 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid  
9 not more than seven calendar days following the close of the payroll period.

10 Cal. Lab. Code § 210 provides:

11 [I]n addition to, and entirely independent and apart from, any other penalty provided in  
12 this article, every person who fails to pay the wages of each employee as provided in  
13 Sections. . .204. . .shall be subject to a civil penalty as follows: (1) For any initial  
14 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
15 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)  
16 for each failure to pay each employee, plus 25 percent of the amount unlawfully  
17 withheld.

18 25. DEFENDANT from time to time failed to pay PLAINTIFF and members of the  
19 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period  
20 in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro” wage payment.

21 **G. Violations for Failure to Pay Wages When Due**

22 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and Other  
23 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties  
24 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based  
25 thereon alleges that such failure was willful, such that PLAINTIFF and members of the CALIFORNIA  
26 CLASS whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab.  
27 Code Sections 201-203.

28 **H. Unlawful Deductions Violations**

29 27. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect  
30 or receive from an employee any part of wages theretofore paid by said employer to said employee.”  
31 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA CLASS

1 Members, made unlawful deductions from compensation payable to PLAINTIFF and CALIFORNIA  
2 CLASS Members, failed to disclose all aspects of the deductions from compensation payable to  
3 PLAINTIFF and CALIFORNIA CLASS Members, and thereby failed to pay these employees all wages  
4 due at each applicable pay period and upon termination. PLAINTIFF and members of the  
5 CALIFORNIA CLASS seek recovery of all illegal deductions from wages according to proof, related  
6 penalties, interest, attorney fees and costs.

7 **I. Unreimbursed Business Expenses**

8 28. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
9 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by  
10 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their  
11 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required  
12 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
13 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
14 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his  
15 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless  
16 the employee, at the time of obeying the directions, believed them to be unlawful."

17 29. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
18 Members as a business expense, were required by DEFENDANT to use their own personal cellular  
19 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not  
20 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal  
21 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA  
22 CLASS Members were required by DEFENDANT to use their personal cellular phones for work-related  
23 tasks. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other  
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but  
25 were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
26 benefit of DEFENDANT.

1       **J. Suitable Seating Violations**

2           30.    PLAINTIFF further alleges that the station counters in DEFENDANT's stores provide  
3 ample space behind each counter area to allow for the presence and use of a stool or seat by  
4 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's employees'  
5 working at DEFENDANT's stores spend a very substantial portion, and, in many workdays, the vast  
6 majority of their working time behind these counters. The nature of the position can reasonably be  
7 accomplished while using a seat/stool.

8           31.    In violation of the applicable sections of the California Labor Code and the requirements  
9 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of  
10 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide  
11 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'  
12 work reasonably permitted sitting.

13           32.    DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved  
14 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the  
15 performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not  
16 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct  
17 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor  
18 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

19           33.    Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required  
20 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code  
21 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did  
22 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and  
23 also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of  
24 the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of  
25 PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure  
26 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business  
27 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
28 \$75,000.



1 **JURISDICTION AND VENUE**

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

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

11 **THE CALIFORNIA CLASS**

12 36. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
13 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,  
14 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who  
15 are or previously were employed by Defendant Ash's First and/or Defendant NYRN and/or Defendant  
16 SCZZ and/or Defendant Area 29 in California and classified as non-exempt employees (the  
17 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of  
18 this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS  
19 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is  
20 under five million dollars (\$5,000,000.00).

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

23 38. DEFENDANT, as a matter of company policy, practice and procedure, and in violation  
24 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and  
25 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a  
26 practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and  
27 other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,  
28 required employees to perform this work and permits or suffers to permit this work.

1           39. DEFENDANT has the legal burden to establish that each and every CALIFORNIA  
2 CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws.  
3 The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the  
4 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each  
5 and every CALIFORNIA CLASS Member is paid as required by law. This common business practice  
6 is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide  
7 basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*  
8 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

9           40. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS  
10 Members is impracticable.

11           41. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 12           a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§  
13           17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in  
14           place company policies, practices and procedures that failed to record and pay  
15           PLAINTIFF and the other members of the CALIFORNIA CLASS for all time  
16           worked, including minimum wages owed and overtime wages owed for work  
17           performed by these employees; and,
- 18           b. Committing an act of unfair competition in violation of the UCL, by failing to  
19           provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with  
20           the legally required meal and rest periods.

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

- 23           a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
24           joinder of all such persons is impracticable and the disposition of their claims as a  
25           class will benefit the parties and the Court;
- 26           b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
27           raised in this Complaint are common to the CALIFORNIA CLASS will apply to  
28           every member of the CALIFORNIA CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each  
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
3 the CALIFORNIA CLASS, was classified as a nonexempt employee paid on an  
4 hourly basis who was subjected to the DEFENDANT's deceptive practice and  
5 policy which failed to provide the legally required meal and rest periods to the  
6 CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and  
7 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of  
8 DEFENDANT's employment practices. PLAINTIFF and the members of the  
9 CALIFORNIA CLASS were and are similarly or identically harmed by the same  
10 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- 11 d. The representative PLAINTIFF will fairly and adequately represent and protect the  
12 interest of the CALIFORNIA CLASS, and has retained counsel who are competent  
13 and experienced in Class Action litigation. There are no material conflicts between  
14 the claims of the representative PLAINTIFF and the members of the  
15 CALIFORNIA CLASS that would make class certification inappropriate. Counsel  
16 for the CALIFORNIA CLASS will vigorously assert the claims of all  
17 CALIFORNIA CLASS Members.

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

- 20 a. Without class certification and determination of declaratory, injunctive, statutory  
21 and other legal questions within the class format, prosecution of separate actions  
22 by individual members of the CALIFORNIA CLASS will create the risk of:
- 23 1. Inconsistent or varying adjudications with respect to individual members of the  
24 CALIFORNIA CLASS which would establish incompatible standards of  
25 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
  - 26 2. Adjudication with respect to individual members of the CALIFORNIA CLASS  
27 which would as a practical matter be dispositive of interests of the other  
28

1 members not party to the adjudication or substantially impair or impede their  
2 ability to protect their interests.

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

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

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

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

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

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

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

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

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

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

19 a. The questions of law and fact common to the CALIFORNIA CLASS predominate  
20 over any question affecting only individual CALIFORNIA CLASS Members  
21 because the DEFENDANT's employment practices are applied with respect to the  
22 CALIFORNIA CLASS;

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

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

22 45. DEFENDANT maintains records from which the Court can ascertain and identify by job  
23 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's  
24 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the  
25 Complaint to include any additional job titles of similarly situated employees when they have been  
26 identified. THE CALIFORNIA LABOR SUB-CLASS.PLAINTIFF further brings the Second, Third,  
27 Fourth, Fifth, Sixth,Seventh, and Eighth causes Action on behalf of a California sub-class, defined as all  
28 members of the CALIFORNIA CLASS who are or previously were employed by Defendant Ash's First

1 and/or Defendant NYRN and/or Defendant SCZZ and/or Defendant Area 29 in California and classified  
2 as non exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period  
3 three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the  
4 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The  
5 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is  
6 under five million dollars (\$5,000,000.00).

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

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

22 48. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 26 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation  
27 due to members of the CALIFORNIA LABOR SUBCLASS for missed meal and rest  
28

1 breaks in violation of the California Labor Code and California regulations and the  
2 applicable California Wage Order;

- 3 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the  
4 CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- 5 c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- 6 d. The proper measure of damages and penalties owed to the members of the  
7 CALIFORNIA LABOR SUB-CLASS; and,
- 8 e. Whether DEFENDANT's conduct was willful.

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

- 11 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the PLAINTIFF and  
12 the members of the CALIFORNIA LABOR SUBCLASS all wages due for overtime  
13 worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 14 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately pay  
15 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct  
16 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§  
17 1194 and 1197;
- 18 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of  
19 the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing  
20 showing the corresponding correct amount of wages earned by the employee;
- 21 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the  
22 other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-  
23 duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest  
24 breaks;
- 25 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee  
26 is discharged or quits from employment, the employer must pay the employee all wages  
27 due without abatement, by failing to tender full payment and/or restitution of wages  
28



1 owed or in the manner required by California law to the members of the CALIFORNIA  
2 LABOR SUB-CLASS who have terminated their employment; and,

- 3 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
4 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the  
5 discharge of their job duties.

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

- 8 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous  
9 that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable  
10 and the disposition of their claims as a class will benefit the parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised  
12 in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will  
13 apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 14 c. The claims of the representative PLAINTIFF are typical of the claims of each member  
15 of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of  
16 the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an  
17 hourly basis who was subjected to the DEFENDANT's practice and policy which failed  
18 to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS.  
19 PLAINTIFF sustained economic injury as a result of DEFENDANT's employment  
20 practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS  
21 were and are similarly or identically harmed by the same unlawful, deceptive, and unfair  
22 misconduct engaged in by DEFENDANT; and,
- 23 d. The representative PLAINTIFF will fairly and adequately represent and protect the  
24 interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are  
25 competent and experienced in Class Action litigation. There are no material conflicts  
26 between the claims of the representative PLAINTIFF and the members of the  
27 CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate.
- 28

1 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims  
2 of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 5 a. Without class certification and determination of declaratory, injunctive, statutory and  
6 other legal questions within the class format, prosecution of separate actions by  
7 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 8 1. Inconsistent or varying adjudications with respect to individual members of the  
9 CALIFORNIA LABOR SUB-CLASS which would establish incompatible  
10 standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-  
11 CLASS; or,
  - 12 2. Adjudication with respect to individual members of the CALIFORNIA LABOR  
13 SUB-CLASS which would as a practical matter be dispositive of interests of the  
14 other members not party to the adjudication or substantially impair or impede  
15 their ability to protect their interests.
- 16 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to  
17 act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS,  
18 making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-  
19 CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct  
20 wages for all time worked by the members of the CALIFORNIA LABOR SUBCLASS  
21 as required by law;
- 22 c. Common questions of law and fact predominate as to the members of the CALIFORNIA  
23 LABOR SUB-CLASS, with respect to the practices and violations of California Law as  
24 listed above, and predominate over any question affecting only individual  
25 CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other  
26 available methods for the fair and efficient adjudication of the controversy, including  
27 consideration of:  
28

- 1 1. The interests of the members of the CALIFORNIA LABOR SUBCLASS in  
2 individually controlling the prosecution or defense of separate actions in that the  
3 substantial expense of individual actions will be avoided to recover the relatively  
4 small amount of economic losses sustained by the individual CALIFORNIA  
5 LABOR SUB-CLASS Members when compared to the substantial expense and  
6 burden of individual prosecution of this litigation;
- 7 2. Class certification will obviate the need for unduly duplicative litigation that  
8 would create the risk of:
  - 9 A. Inconsistent or varying adjudications with respect to individual  
10 members of the CALIFORNIA LABOR SUBCLASS, which would  
11 establish incompatible standards of conduct for the DEFENDANT;  
12 and/or,
  - 13 B. Adjudications with respect to individual members of the  
14 CALIFORNIA LABOR SUB-CLASS would as a practical matter be  
15 dispositive of the interests of the other members not parties to the  
16 adjudication or substantially impair or impede their ability to protect their  
17 interests;
- 18 3. In the context of wage litigation because a substantial number of individual  
19 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal  
20 rights out of fear of retaliation by DEFENDANT, which may adversely affect an  
21 individual's job with DEFENDANT or with a subsequent employer, the Class  
22 Action is the only means to assert their claims through a representative; and,
- 23 4. A class action is superior to other available methods for the fair and efficient  
24 adjudication of this litigation because class treatment will obviate the need for  
25 unduly and unnecessary duplicative litigation that is likely to result in the absence  
26 of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 1 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS  
2 predominate over any question affecting only individual CALIFORNIA LABOR SUB-  
3 CLASS Members;
- 4 b. A Class Action is superior to any other available method for the fair and efficient  
5 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS  
6 because in the context of employment litigation a substantial number of individual  
7 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights  
8 individually out of fear of retaliation or adverse impact on their employment;
- 9 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is  
10 impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the  
11 Court;
- 12 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be  
13 able to obtain effective and economic legal redress unless the action is maintained as a  
14 Class Action;
- 15 e. There is a community of interest in obtaining appropriate legal and equitable relief for  
16 the acts of unfair competition, statutory violations and other improprieties, and in  
17 obtaining adequate compensation for the damages and injuries which DEFENDANT's  
18 actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- 19 f. There is a community of interest in ensuring that the combined assets of DEFENDANT  
20 are sufficient to adequately compensate the members of the CALIFORNIA LABOR  
21 SUB-CLASS for the injuries sustained;
- 22 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
23 CALIFORNIA LABOR SUB-CLASS, thereby making final class wide relief  
24 appropriate with respect to the CALIFORNIA LABOR SUBCLASS as a whole;
- 25 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable  
26 from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS  
27 consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in  
28 California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

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

11 55. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §  
12 17021.

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

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

23 Cal. Bus. & Prof. Code § 17203.

24 57. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a  
25 business practice which violates California law, including but not limited to, the applicable Industrial  
26 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections  
27 201, 202, 203, 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802, for which this Court  
28 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may  
be necessary to prevent and remedy the conduct held to constitute unfair competition, including  
restitution of wages wrongfully withheld.

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

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

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

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

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

25           63. PLAINTIFF further demands on behalf of herself and each member of the CALIFORNIA  
26 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was  
27 not timely provided as required by law.

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

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

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

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

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

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

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

9           78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,  
10 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without  
11 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA  
12 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR  
13 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all  
14 earned wages.

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

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

26           81. In performing the acts and practices herein alleged in violation of California labor laws,  
27 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time  
28 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act

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

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

16 **THIRD CAUSE OF ACTION**

17 **For Failure To Pay Overtime Compensation**

18 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

22 84. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a  
23 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the  
24 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
25 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve  
26 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

8           88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT  
10 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

18           90. In committing these violations of the California Labor Code, DEFENDANT inaccurately  
19 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other  
20 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the  
21 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial  
22 Welfare Commission requirements and other applicable laws and regulations.

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

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

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

5 93. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other  
6 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they  
7 are entitled to, constituting a failure to pay all earned wages.

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

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

19 96. DEFENDANT knew or should have known that PLAINTIFF and the other members of  
20 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.  
21 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay  
22 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT  
23 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA  
24 LABOR SUB-CLASS for overtime worked.

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **For Failure to Provide Required Meal Periods**

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

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

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

21 100. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to  
22 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA  
23 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not  
25 prevent these employees from being relieved of all of their duties for the legally required off-duty meal  
26 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR  
27 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their  
28 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA

1 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work  
2 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to  
3 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some  
4 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work  
5 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-  
6 CLASS therefore forfeited meal breaks without additional compensation and in accordance with  
7 DEFENDANT's strict corporate policy and practice.

8 101. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC  
9 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members  
10 who were not provided a meal period, in accordance with the applicable Wage Order, one additional  
11 hour of compensation at each employee's regular rate of pay for each workday that a meal period was  
12 not provided.

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

22 104. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to  
23 time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
24 Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes  
25 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten  
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third  
27 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to  
28 time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided

1 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
2 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by  
3 DEFENDANT and DEFENDANT's managers.

4 105. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC  
5 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members  
6 who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour  
7 of compensation at each employee's regular rate of pay for each workday that rest period was not  
8 provided.

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

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

16 107. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege  
17 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

- 20 (1) gross wages earned,
- 21 (2) total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment of overtime under  
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 24 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid  
25 on a piece-rate basis,
- 26 (4) all deductions, provided that all deductions made on written orders of the  
27 employee may be aggregated and shown as one item,
- 28 (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by  
January 1, 2008, only the last four digits of his or her social security number or an  
employee identification number other than a social security number may be shown on  
the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee.

1  
2 109. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members  
3 of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed  
4 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that  
5 every employer shall furnish each of his or her employees with an accurate itemized wage statement in  
6 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during  
7 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the  
8 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage  
9 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
10 DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA  
11 LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

26 **Against All Defendants)**

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



1 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

6 113. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to  
7 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for  
8 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.  
9 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members  
10 for expenses which included, but were not limited to, costs related to using their personal cellular phones  
11 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA  
12 LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones  
13 in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse  
14 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using  
15 their personal cellular phones for DEFENDANT within the course and scope of their employment for  
16 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is  
17 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses  
18 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
19 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
20 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and  
21 regulations of California.

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

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

5 115. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege  
6 and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 116. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

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

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

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

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

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

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

23 119. Cal. Lab. Code § 203 provides, in relevant part, that:

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



1 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
2 CLASS PERIOD plus interest thereon at the statutory rate;

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

8 D. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the  
9 applicable IWC Wage Order;

10 E. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

11 F. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR  
12 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

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

16 3. On all claims:


17 A. An award of interest, including prejudgment interest at the legal rate;

18 B. Such other and further relief as the Court deems just and equitable; and,

19 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including,  
20 but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

21  
22 Dated: January 7, 2022

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.


23  
24 By:   
25 Jean-Claude Lapuyade  
26 Attorneys for PLAINTIFF  
27  
28

**DEMAND FOR JURY TRIAL**

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

Dated: January 7, 2022

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

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**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse so that we can return the card to you.  
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Sh's First LLC  
Sean P. Maddocks  
3 Corporate Plaza, Prt #150  
Ewton Beach, CA 92640



9590 9402 6744 1060 3009 77

Article Number (Transfer from service label)

7021 2720 0000 9972 6402

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
X

B. Received by (Printed Name) C. Date of Delivery  
1/14/22

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

LOWE

3. Service Type  
 Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail®  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery


Mail  
 Mail Restricted Delivery (500)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Alca 2a LLC dba off the  
Charts  
c/o Norman YOUSIF  
1330 Granite Hills Dr.  
El Cajon, CA 92019



9590 9402 6744 1060 3010 04

2. Article Number (Transfer from service label)

7021 2720 0000 9972 6372

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery  
 POS 198-CP 1/13/22

D. Is delivery address different from Item 1?  Yes  
 If YES, enter delivery address below:  No

LOWE

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery
  - Mail Restricted Delivery (0)

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For delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL USE**

7021 2720 0000 9972 6396

|  |    |
|--|----|
| Certified Mail Fee   | \$ |
| Extra Services & Fees (check box, add fee as appropriate)    |    |
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ |
| <input type="checkbox"/> Adult Signature Required            | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |
| Postage  | \$ |
| Total Postage and Fees                                       | \$ |

Postmark  
Here

|                                    |                      |
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| Sent To                            | SC23 collective inc. |
| Street and Apt. No., or PO Box No. |                      |
| City, State, ZIP+4®                |                      |



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| Certified Mail Fee   |          |
| \$   |          |
| Extra Services & Fees (check box, add fee as appropriate)    |          |
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ _____ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ _____ |
| <input type="checkbox"/> Adult Signature Required            | \$ _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ _____ |
| Postage  |          |
| \$   |          |
| Total Postage and Fees                                       |          |
| \$   |          |

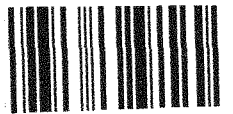
Postmark  
Here

|                                    |                        |
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| Sent To                            | <b>N4RN Management</b> |
| Street and Apt. No., or PO Box No. |                        |
| City, State, ZIP+4®                |                        |

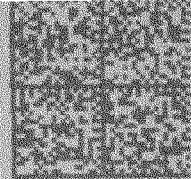
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RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

NIXIE 910 DE 1 0001/16/22



9889 00 9972 6389



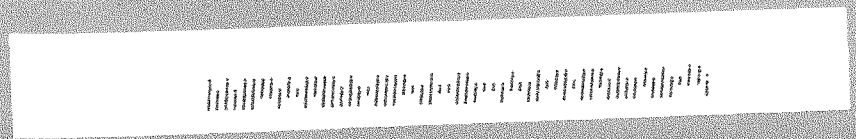
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First-Class - BM  
ZIP 92121  
01/07/2022  
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**NYRN MANAGEMENT LLC**  
**c/o Norman Yousif**  
**1093 East Main Street, #243**  
**El Cajon, CA 92020**



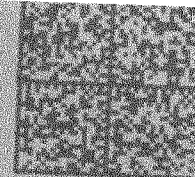
NOT DELIVERABLE AS ADDRESSED  
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\$008.76<sup>0</sup>  
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c/o Quintin Shammam  
1093 East Main Street, #243  
El Cajon, CA 92020

