

**SUMMONS
(CITACION JUDICIAL)**

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

OTAY MESA SALES, INC., a California Corporation, and DOES 1-50, Inclusive,

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

JONATHAN ROA, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/30/2019 at 04:54:35 PM

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court, Hall of Justice
330 W. Broadway Street
San Diego, CA 92101

CASE NUMBER: 37-2019-00057735-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) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

C. Miranda
C. Miranda

DATE: 10/31/2019
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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



1 **ZAKAY LAW GROUP, APC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
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Facsimile: (858) 404-9203

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Superior Court of California,
County of San Diego
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By Carolina Miranda, Deputy Clerk

4 **THE JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Ave. Suite C204
6 San Diego, CA 92110
7 Telephone: (619)599-8292
Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 JONATHAN ROA, an individual, on behalf of
himself and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 v.

15 OTAY MESA SALES, INC., a California
Corporation, and DOES 1-50, Inclusive,

16 Defendants.

Case No: 37-2019-00057735-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;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant OTAY MESA SALES, INC. (“OMS” or “DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. OMS offers industrial and construction equipment for sale and for rental. OMS
10 operates nationwide, but is headquartered in San Diego, where its sales headquarters and rental
11 center are located.

12 3. PLAINTIFF was employed by DEFENDANT in California from December 2017
13 to October 2018, and again from January 2019 to July 2019 as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of
15 minimum and overtime wages due for all time worked.

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

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

1 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
2 economically injured by DEFENDANT's past and current unlawful conduct, and all other
3 appropriate legal and equitable relief.

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

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

21 THE CONDUCT

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. DEFENDANT required
26 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
27 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
28 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break, as
well as after clocking out when PLAINTIFF's shift should have ended. As a result, the

1 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
2 compensation by regularly working without their time being accurately recorded and without
3 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
4 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
5 time worked is evidenced by DEFENDANT's business records.

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
8 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other
9 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
10 more than five (5) hours during some shifts without receiving a meal break. Further,
11 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
12 off-duty meal period for some workdays in which these employees are required by
13 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to provide
14 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
15 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
16 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
17 accordance with DEFENDANT's strict corporate policy and practice.

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

1 California Wage Order requires employers to provide employees with off-duty rest periods,
2 which the California Supreme Court defined as time during which an employee is relieved from
3 all work related duties and free from employer control. In so doing, the Court held that the
4 requirement under California law that employers authorize and permit all employees to take rest
5 period means that employers must relieve employees of all duties and relinquish control over
6 how employees spend their time which includes control over the locations where employees
7 may take their rest period. Employers cannot impose controls that prohibit an employee from
8 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's uniform policy
9 restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks
10 and was unlawful based on Defendant's rule which stated PLAINTIFF and other CALIFORNIA
11 CLASS Members could not leave the work premises during their rest period and had to be
12 available to clients should the need arise.

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

24 12. In the course of their employment, PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cell phones to conduct work related business. As a result, in
3 the course of their employment with DEFENDANT the PLAINTIFF and other members of the
4 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
5 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
6 benefit of DEFENDANT.

7 13. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
8 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with complete and accurate wage statements which
10 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
11 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
12 an accurate itemized wage statement in writing showing, among other things, gross wages
13 earned and all applicable hourly rates in effect during the pay period and the corresponding
14 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
15 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
16 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
17 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
18 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
19 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
20 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
21 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

22 14. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally, knowingly and systematically
25 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
26 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
27 purposefully avoid the payment for all time worked as required by California law which allows
28 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied

1 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

15 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
16 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
17 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANTS
18 also failed to reimburse PLAINTIFF for her personal cell phone use. DEFENDANT did not
19 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
20 and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of
21 the work performed by the PLAINTIFF did not prevent her from being relieved of all of his
22 duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
23 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS'
24 business records. As a result of DEFENDANT not accurately recording all missed meal and rest
25 periods and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
26 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
27 DEFENDANT have yet to pay PLAINTIFF all wages due to him and DEFENDANT has failed
28

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

3 **JURISDICTION AND VENUE**

4 17. 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
6 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
7 of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

14
15 **THE CALIFORNIA CLASS**

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

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

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
3 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

6 22. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
8 required by California laws. The DEFENDANT, however, as a matter of uniform and
9 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
10 PERIOD and still fails to have in place a policy or practice to ensure that each and every
11 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
12 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
13 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
14 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

15 23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

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

1 c. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members with necessary expenses incurred in the discharge of their job
5 duties.

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

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

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

14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
16 of the CALIFORNIA CLASS, was a non-exempt employee paid on an hourly
17 basis who was subjected to the DEFENDANT's deceptive practice and policy
18 which failed to provide the legally required meal and rest periods to the
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
21 as a result of DEFENDANT's employment practices. PLAINTIFF and the
22 members of the CALIFORNIA CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are
27 competent and experienced in Class Action litigation. There are no material
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
3 CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate actions in
9 that the substantial expense of individual actions will be avoided to
10 recover the relatively small amount of economic losses sustained by the
11 individual CALIFORNIA CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this
13 litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly,
2 willfully, and systematically, engaged in a practice whereby DEFENDANT failed to correctly
3 calculate compensation for the time worked by PLAINTIFF and the other members of the
4 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
5 work, required employees to perform this work and permitted or suffered to permit this work.
6 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
7 wages to which these employees are entitled in order to unfairly cheat the competition and
8 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
10 PERIOD should be adjusted accordingly.

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

16 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
17 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 20 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
22 pay for missed meal and rest breaks in violation of the California Labor Code
23 and California regulations and the applicable California Wage Order;
- 24 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
25 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
26 statements
- 27 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
28 conduct;

1 d. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and

3 e. Whether DEFENDANT's conduct was willful.

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

6 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
7 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
8 wages due for overtime worked, for which DEFENDANT is liable pursuant to
9 Cal. Lab. Code § 1194;

10 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
11 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
12 the correct minimum wage pay for which DEFENDANT is liable pursuant to
13 Cal. Lab. Code §§ 1194 and 1197;

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

18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
20 statement in writing showing the corresponding correct amount of wages earned
21 by the employee;

22 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
23 CALIFORNIA CLASS members with necessary expenses incurred in the
24 discharge of their job duties; and

25 f. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
26 employee is discharged or quits from employment, the employer must pay the
27 employee all wages due without abatement, by failing to tender full payment
28 and/or restitution of wages owed or in the manner required by California law to

1 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
2 their employment.

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

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

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

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

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

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

3 36. In addition to meeting the statutory prerequisites to a Class Action, this action is
4 properly 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
6 and other legal questions within the class format, prosecution of separate actions
7 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
8 the risk of:

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

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

17 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR
19 SUB-CLASS, making appropriate class-wide relief with respect to the
20 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
21 uniformly fail to pay all wages due. Including the correct wages for all time
22 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
23 by law;

24 c. Common questions of law and fact predominate as to the members of the
25 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
26 violations of California Law as listed above, and predominate over any question
27 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
28

1 Class Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

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

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

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

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

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

27 iv. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will

1 obviate the need for unduly and unnecessary duplicative litigation that is
2 likely to result in the absence of certification of this action pursuant to
3 Cal. Code of Civ. Proc. § 382.

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any

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

3 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for
7 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
8 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
9 unfair competition, including restitution of wages wrongfully withheld.

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

16 43. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
18 mandated meal and rest periods and the required amount of compensation for missed meal and
19 rest periods, and failed to pay minimum and overtime wages owed, and failed to reimburse all
20 necessary business expenses incurred, due to a systematic business practice that cannot be
21 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
22 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
23 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
24 restitution of wages wrongfully withheld.

25 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 45. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
4 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

1 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

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

12 **SECOND CAUSE OF ACTION**

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

15 **Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
16 **Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)

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

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

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

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

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

72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for DEFENDANTS and were not paid for all the time they worked, including overtime work.

73. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight

1 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

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

23 78. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194,
26 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
28 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
DEFENDANT's business records and witnessed by employees.

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

7 80. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
9 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
10 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
11 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
overtime wages for their overtime worked.

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

21 82. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
22 SUB-CLASS request recovery of overtime wages, according to proof, interest, statutory costs,
23 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
24 by the California Labor Code and/or other applicable statutes. To the extent overtime
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
28 under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as

1 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **Defendants)**

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

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

26 85. DEFENDANT further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

- 20 a. Gross wages earned,
- 21 b. (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
23 of overtime under subdivision (a) of Section 515 or any applicable order
24 of the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

98. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according

1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN DUE**

5 **(Cal. Lab. Code § 203)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **Defendants)**

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

11 100. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

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

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

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

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

104. Cal. Lab. Code § 203 provides:

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

4 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
5 CLASS Members terminated and DEFENDANT has not tendered payment of wages to these
6 employees who missed meal and rest breaks, as required by law.

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

13 **NINTH CAUSE OF ACTION**

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

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

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

17 107. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.

19 108. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
21 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
22 fundamentally a law enforcement action designed to protect the public and not to benefit private
23 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
24 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
25 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
26 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
27 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
28 subject to arbitration.

1 109. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of August 20, 2018
6 until the present (the "AGGRIEVED EMPLOYEES").

7 110. On August 20, 2019, PLAINTIFF gave written notice by certified mail to the
8 Labor and Workforce Development Agency (the "Agency") and the employer of the
9 specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
11 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
12 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
13 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
14 to all AGGRIEVED EMPLOYEES as herein defined.

15 111. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
17 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
18 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
19 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
20 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
21 including but not limited to Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.3,
22 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2804, and the
23 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
24 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
25 Code Private Attorney General Act of 2004 as the representative of the State of California for
26 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27
28

PRAYER FOR RELIEF

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

3
4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
22 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
28 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and

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an award of costs for violation of Cal. Lab. Code § 226

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

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

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

4. On all claims:

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

DATED: October 30, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF


DEMAND FOR A JURY TRIAL

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

DATED: October 30, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #23001

August 20, 2019

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

Online Filing

OTAY MESA SALES, INC.
c/o TOM PARASHOS
9847 CAMPO ROAD
SPRING VALLEY, CA 91977

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2804, 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 Jonathan Roa (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Otay Mesa Sales, Inc., a California Corporation (“Defendant”). Plaintiff was employed by Defendant in California from December 2017 to October 2018 and again from January 2019 to July 2019 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control, including minimum wage and overtime. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities,

dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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 Statute 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 Jonathan Roa

1 **ZAKAY LAW GROUP, APC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
San Diego, CA 92121
3 Telephone: (619) 255-9047
Facsimile: (858) 404-9203

4 **THE JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Ave. Suite C204
6 San Diego, CA 92110
7 Telephone: (619)599-8292
Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 JONATHAN ROA, an individual, on behalf of
12 himself and on behalf of all persons similarly
13 situated,

14 Plaintiff,

15 v.

16 OTAY MESA SALES, INC., a California
Corporation, and DOES 1-50, Inclusive,

17 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;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant OTAY MESA SALES, INC. (“OMS” or “DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. OMS offers industrial and construction equipment for sale and for rental. OMS
10 operates nationwide, but is headquartered in San Diego, where its sales headquarters and rental
11 center are located.

12 3. PLAINTIFF was employed by DEFENDANT in California from December 2017
13 to October 2018, and again from January 2019 to July 2019 as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of
15 minimum and overtime wages due for all time worked.

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

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

1 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
2 economically injured by DEFENDANT's past and current unlawful conduct, and all other
3 appropriate legal and equitable relief.

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

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

21 THE CONDUCT

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. DEFENDANT required
26 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
27 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
28 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break, as
well as after clocking out when PLAINTIFF's shift should have ended. As a result, the

1 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
2 compensation by regularly working without their time being accurately recorded and without
3 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
4 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
5 time worked is evidenced by DEFENDANT's business records.

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
8 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other
9 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
10 more than five (5) hours during some shifts without receiving a meal break. Further,
11 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
12 off-duty meal period for some workdays in which these employees are required by
13 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to provide
14 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
15 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
16 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
17 accordance with DEFENDANT's strict corporate policy and practice.

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

1 California Wage Order requires employers to provide employees with off-duty rest periods,
2 which the California Supreme Court defined as time during which an employee is relieved from
3 all work related duties and free from employer control. In so doing, the Court held that the
4 requirement under California law that employers authorize and permit all employees to take rest
5 period means that employers must relieve employees of all duties and relinquish control over
6 how employees spend their time which includes control over the locations where employees
7 may take their rest period. Employers cannot impose controls that prohibit an employee from
8 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's uniform policy
9 restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks
10 and was unlawful based on Defendant's rule which stated PLAINTIFF and other CALIFORNIA
11 CLASS Members could not leave the work premises during their rest period and had to be
12 available to clients should the need arise.

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

24 12. In the course of their employment, PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cell phones to conduct work related business. As a result, in
3 the course of their employment with DEFENDANT the PLAINTIFF and other members of the
4 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
5 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
6 benefit of DEFENDANT.

7 13. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
8 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with complete and accurate wage statements which
10 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
11 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
12 an accurate itemized wage statement in writing showing, among other things, gross wages
13 earned and all applicable hourly rates in effect during the pay period and the corresponding
14 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
15 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
16 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
17 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
18 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
19 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
20 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
21 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

22 14. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally, knowingly and systematically
25 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
26 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
27 purposefully avoid the payment for all time worked as required by California law which allows
28 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied

1 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

15 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
16 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
17 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANTS
18 also failed to reimburse PLAINTIFF for her personal cell phone use. DEFENDANT did not
19 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
20 and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of
21 the work performed by the PLAINTIFF did not prevent her from being relieved of all of his
22 duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
23 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS'
24 business records. As a result of DEFENDANT not accurately recording all missed meal and rest
25 periods and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
26 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
27 DEFENDANT have yet to pay PLAINTIFF all wages due to him and DEFENDANT has failed
28

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

3 **JURISDICTION AND VENUE**

4 17. 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
6 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
7 of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

14
15 **THE CALIFORNIA CLASS**

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

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

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
3 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

6 22. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
8 required by California laws. The DEFENDANT, however, as a matter of uniform and
9 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
10 PERIOD and still fails to have in place a policy or practice to ensure that each and every
11 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
12 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
13 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
14 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

15 23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

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

1 c. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members with necessary expenses incurred in the discharge of their job
5 duties.

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

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

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

14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
16 of the CALIFORNIA CLASS, was a non-exempt employee paid on an hourly
17 basis who was subjected to the DEFENDANT's deceptive practice and policy
18 which failed to provide the legally required meal and rest periods to the
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
21 as a result of DEFENDANT's employment practices. PLAINTIFF and the
22 members of the CALIFORNIA CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are
27 competent and experienced in Class Action litigation. There are no material
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
3 CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate actions in
9 that the substantial expense of individual actions will be avoided to
10 recover the relatively small amount of economic losses sustained by the
11 individual CALIFORNIA CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this
13 litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly,
2 willfully, and systematically, engaged in a practice whereby DEFENDANT failed to correctly
3 calculate compensation for the time worked by PLAINTIFF and the other members of the
4 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
5 work, required employees to perform this work and permitted or suffered to permit this work.
6 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
7 wages to which these employees are entitled in order to unfairly cheat the competition and
8 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
10 PERIOD should be adjusted accordingly.

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

16 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
17 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 20 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
22 pay for missed meal and rest breaks in violation of the California Labor Code
23 and California regulations and the applicable California Wage Order;
- 24 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
25 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
26 statements
- 27 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
28 conduct;

1 d. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and

3 e. Whether DEFENDANT's conduct was willful.

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

6 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
7 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
8 wages due for overtime worked, for which DEFENDANT is liable pursuant to
9 Cal. Lab. Code § 1194;

10 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
11 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
12 the correct minimum wage pay for which DEFENDANT is liable pursuant to
13 Cal. Lab. Code §§ 1194 and 1197;

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

18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
20 statement in writing showing the corresponding correct amount of wages earned
21 by the employee;

22 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
23 CALIFORNIA CLASS members with necessary expenses incurred in the
24 discharge of their job duties; and

25 f. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
26 employee is discharged or quits from employment, the employer must pay the
27 employee all wages due without abatement, by failing to tender full payment
28 and/or restitution of wages owed or in the manner required by California law to

1 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
2 their employment.

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

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

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

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

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

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

3 36. In addition to meeting the statutory prerequisites to a Class Action, this action is
4 properly 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
6 and other legal questions within the class format, prosecution of separate actions
7 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
8 the risk of:

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

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

17 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR
19 SUB-CLASS, making appropriate class-wide relief with respect to the
20 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
21 uniformly fail to pay all wages due. Including the correct wages for all time
22 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
23 by law;

24 c. Common questions of law and fact predominate as to the members of the
25 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
26 violations of California Law as listed above, and predominate over any question
27 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
28

1 Class Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

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

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

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

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

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

27 iv. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will

1 obviate the need for unduly and unnecessary duplicative litigation that is
2 likely to result in the absence of certification of this action pursuant to
3 Cal. Code of Civ. Proc. § 382.

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any

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

3 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for
7 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
8 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
9 unfair competition, including restitution of wages wrongfully withheld.

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

16 43. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
18 mandated meal and rest periods and the required amount of compensation for missed meal and
19 rest periods, and failed to pay minimum and overtime wages owed, and failed to reimburse all
20 necessary business expenses incurred, due to a systematic business practice that cannot be
21 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
22 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
23 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
24 restitution of wages wrongfully withheld.

25 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 45. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
4 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

1 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

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

12 **SECOND CAUSE OF ACTION**

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

15 **Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
16 **Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 //

28 //

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THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)

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

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

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

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

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

72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for DEFENDANTS and were not paid for all the time they worked, including overtime work.

73. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight

1 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

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

23 78. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194,
26 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were regularly required to work, and did in fact work overtime, and did in fact work
28 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
DEFENDANT's business records and witnessed by employees.

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

7 80. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
9 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
10 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
11 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
overtime wages for their overtime worked.

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

21 82. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
22 SUB-CLASS request recovery of overtime wages, according to proof, interest, statutory costs,
23 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
24 by the California Labor Code and/or other applicable statutes. To the extent overtime
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
28 under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as

1 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **Defendants)**

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

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

26 85. DEFENDANT further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

- 20 a. Gross wages earned,
- 21 b. (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
23 of overtime under subdivision (a) of Section 515 or any applicable order
24 of the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

98. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according

1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN DUE**

5 **(Cal. Lab. Code § 203)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **Defendants)**

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

11 100. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

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

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

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

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

104. Cal. Lab. Code § 203 provides:

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

6 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
7 CLASS Members terminated and DEFENDANT has not tendered payment of wages to these
8 employees who missed meal and rest breaks, as required by law.

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

15 **PRAYER FOR RELIEF**

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

18 1. On behalf of the CALIFORNIA CLASS:

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

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

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- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

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3. On all claims:

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

DATED: August __, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: August __, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF