

**SUMMONS  
(CITACION JUDICIAL)**

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**07/15/2019** at 01:56:08 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

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

SCRIPPS HEALTH, a California domestic non-profit corporation; and  
DOES 1 through 50, Inclusive,

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

DORCENA DEUTSCH, individually and on behalf of all persons  
similarly situated, (see attached)

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

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

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

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

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

San Diego Superior Court, Hall of Justice  
330 W. Broadway  
San Diego, CA 92101

CASE NUMBER:  
(Número del Caso): 37-2019-00036333-CU-OE-CTL

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):  
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291  
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 07/16/2019  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) M. McClure (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):



SHORT TITLE: Deutsch, et al. v. Scripps Health, et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

CHARLES C. HARVEY IV, individually and on behalf of all persons similarly situated, ESTEBAN HERNANDEZ, individually and on behalf of all persons similarly situated; TANYA DEL RIO, individually and on behalf of all persons similarly situated, PATRIZIA GAMBERG, individually and on behalf of all persons similarly situated,

1 **JCL LAW FIRM, APC**  
JEAN-CLAUDE LAPUYADE (STATE BAR #248676)  
2 3990 OLD TOWN AVENUE, SUITE C204  
SAN DIEGO, CA 92110  
3 TEL: (619) 599-8292  
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4 **ZAKAY LAW GROUP, APLC**  
5 SHANI O. ZAKAY (STATE BAR #277924)  
5850 OBERLIN DRIVE, SUITE 230A  
6 SAN DIEGO, CA 92121  
TEL: (619) 255-9047  
7 FAX: (858) 404-9203

8 Attorneys for Plaintiffs DORCENA DEUTSCH et al.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**07/15/2019** at 01:56:06 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

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

11 DORCENA DEUTSCH, individually and on  
behalf of all persons similarly situated,  
12 CHARLES C. HARVEY IV, individually  
and on behalf of all persons similarly  
13 situated, ESTEBAN HERNANDEZ,  
individually and on behalf of all persons  
14 similarly situated; TANYA DEL RIO,  
individually and on behalf of all persons  
15 similarly situated, PATRIZIA GAMBERG,  
individually and on behalf of all persons  
16 similarly situated,

17 Plaintiff,

18 vs.

19  
20 SCRIPPS HEALTH, a California domestic  
non-profit corporation; and DOES 1 through  
21 50, Inclusive,

22 Defendants.

Case No: 37-2019-00036333-CU-OE-CTL

**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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs DORCENA DEUTSCH (“DEUTSCH”), CHARLES C. HARVEY IV  
2 (“HARVEY”) ESTEBAN HERNANDEZ (“HERNANDEZ”) TANYA DEL RIO (“DEL RIO”)  
3 and PATRIZIA GAMBERG (“GAMBERG”) (hereinafter collectively “PLAINTIFFS”),  
4 individually on behalf of those similarly situated current and former SSRS float pool employees,  
5 alleges based on information and beliefs, except for her own acts and knowledge which are based on  
6 personal knowledge, the following:

7 **THE PARTIES**

8 1. Defendant SCRIPPS HEALTH (“DEFENDANT” or “DEFENDANTS”) is a  
9 California domestic non-profit corporation that at all relevant times mentioned herein conducted  
10 and continues to conduct substantial business in the state of California.

11 2. DEFENDANT owns and operates the Scripps Hospital network throughout San  
12 Diego County that includes, but is not limited to, Scripps Mercy Hospital San Diego, Scripps  
13 Mercy Hospital Chula Vista, Scripps Memorial Hospital La Jolla, Scripps Memorial Hospital  
14 Encinitas and Scripps Green Hospital La Jolla.

15 3. Plaintiff DORCENA DEUTSCH, is and was employed by DEFENDANT, as an  
16 hourly, nonexempt employee, assigned to the “SSRS – System Wide Float Pool”, entitled to non-  
17 discretionary flat sum incentive awards, overtime pay and meal and rest periods from June 2017  
18 to the present.

19 4. Plaintiff CHARLES C. HARVEY IV, is and was employed by DEFENDANT, as  
20 an hourly, nonexempt, employee, assigned to the “SSRS – System Wide Float Pool”, entitled to  
21 non-discretionary flat sum incentive awards, overtime pay and meal and rest periods from  
22 November 2015 through the present.

23 5. Plaintiff ESTEBAN HERNANDEZ, is and was employed by DEFENDANT, as  
24 an hourly, nonexempt employee, assigned to the “SSRS – System Wide Float Pool”, entitled to  
25 non-discretionary flat sum incentive awards, overtime pay and, meal and rest periods from  
26 February 22, 2017 through the present.

27 6. Plaintiff TANYA DEL RIO, was employed by DEFENDANT, as an hourly,  
28 nonexempt employee, assigned to the “SSRS – System Wide Float Pool”, entitled to non-

1 discretionary flat sum incentive awards, overtime pay and, meal and rest periods from June 14,  
2 2014 until January 4, 2019.

3 7. Plaintiff PATRIZIA GAMBERG, is and was employed by DEFENDANT, as an  
4 hourly, nonexempt employee, assigned to the “SSRS – System Wide Float Pool”, entitled to non-  
5 discretionary flat sum incentive awards, overtime pay and, meal and rest periods from April 18,  
6 2019 through the present.

7 8. PLAINTIFFS bring this Class Action on behalf of themselves, individually, and  
8 on behalf of all of DEFENDANT’s current and former, non-exempt, employees assigned to the  
9 SSRS - System Wide Float Pool in California (the “CALIFORNIA CLASS”) at any time during  
10 the period beginning four (4) years prior to the filing of the Complaint and ending on the date as  
11 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
12 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
13 (\$5,000,000.00).

14 9. PLAINTIFFS bring this Class Action on behalf of themselves, individually, and  
15 on behalf of the CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS  
16 for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S  
17 uniform policy and practice which failed to, (1) provide PLAINTIFF and the CALIFORNIA  
18 CLASS with legally compliant meal and rest periods, (2) accurately pay meal and rest period  
19 premiums at the regular rate of pay, and (3) accurately pay for all hours worked.

20 10. DEFENDANT’S uniform policies and practices alleged herein are an unlawful,  
21 unfair and deceptive business practice whereby DEFENDANT retained and continue to retain  
22 wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS  
23 and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct  
24 by DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the  
25 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and  
26 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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

16 **THE CONDUCT**

17 **A. Unpaid Overtime**

18 13. Generally, California law provides that non-exempt employees shall not be  
19 employed more than eight hours in any workday or more than 40 hours in any workweek unless  
20 he or she receives one and one-half times his or her regular rate of pay for all hours worked over  
21 eight hours in any workday and over 40 hours in the workweek and double the employee’s regular  
22 rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in  
23 excess of eight on the seventh consecutive day of work in a workweek.

24 14. From time to time, during the CALIFORNIA CLASS PERIOD, DEFENDANTS  
25 required PLAINTIFFS and members of the CALIFORNIA CLASS to work more than eight  
26 hours in a work shift or more than 40 hours in a workweek without the payment of overtime  
27 compensation at one and one-half times their regular rate of pay, or more than 12 hours in a work  
28 shift without payment of overtime compensation at double the their regular rate of pay. As a

1 result of DEFENDANTS' aforementioned unlawful policy and practice, PLAINTIFFS and the  
2 CALIFORNIA CLASS members, from time-to-time, forfeited wages and compensation due and  
3 owed for each workday that DEFENDANTS failed to pay the correct overtime rate of pay.  
4 DEFENDANTS' policy and practice not pay the CALIFORNIA CLASS members the correct  
5 overtime rate for all overtime hours worked in accordance with applicable law is evidenced by  
6 DEFENDANTS' business records.

7 **B. Missed Meal and Rest Period Violations**

8 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
9 Labor Codes, an employer shall not employ an employee for a work period of more than five  
10 hours per day without providing the employee with an uninterrupted and duty free meal period of  
11 not less than 30 minutes, except that if the total work period per day of the employee is no more  
12 than six hours, the meal period may be waived by mutual consent of both the employer and  
13 employee. An employer shall not employ an employee for a work period of more than 10 hours  
14 per day without providing the employee with a second uninterrupted and duty free meal period of  
15 not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second  
16 meal period may be waived by mutual consent of the employer and the employee only if the first  
17 meal period was not waived. If an employer fails to provide an employee with a mandated meal  
18 period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
19 compensation for each workday that the meal period is not provided.

20 16. From time to time during the CALIFORNIA CLASS PERIOD, as a result of their  
21 overburdened work requirements, inadequate staffing and not being relieved of cordless  
22 communication devices during their shifts, DEFENDANTS employed PLAINTIFFS and the  
23 CALIFORNIA CLASS members for work shifts of more than five hours per day without  
24 providing the PLAINTIFFS or the CALIFORNIA CLASS members with a mandated  
25 uninterrupted and duty-free meal period of not less than 30 minutes. Nevertheless,  
26 DEFENDANTS failed to provide PLAINTIFFS and the CALIFORNIA CLASS members with a  
27 one (1) additional hour of pay at PLAINTIFFS' and the CALIFORNIA CLASS members' regular  
28 rate of pay for each workday that it failed to provide PLAINTIFFS and the CALIFORNIA CLASS

1 members with a duty-free meal period of not less than 30 minutes on shifts greater than five hours.  
2 As a result of DEFENDANTS' aforementioned unlawful policy and practice, PLAINTIFFS and  
3 the CALIFORNIA CLASS members, from time-to-time, forfeited wages and compensation due  
4 and owed for each workday that DEFENDANTS failed to provide the uninterrupted and duty-  
5 free meal period on shifts greater than five hours. DEFENDANTS' policy and practice that failed  
6 to (a) provide an uninterrupted and duty-free meal period to PLAINTIFFS and other  
7 CALIFORNIA CLASS members on work periods of greater than five hours per day, or (b) pay  
8 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday  
9 that a meal period is not provided is evidenced by DEFENDANTS' business records.

10 17. From time to time during the CALIFORNIA CLASS PERIOD, as a result of their  
11 overburdened work requirements, inadequate staffing and not being relieved of cordless  
12 communication devices during their shifts, DEFENDANTS employed PLAINTIFFS and the  
13 CALIFORNIA CLASS members for work shifts of more than ten hours per day without providing  
14 the PLAINTIFFS or the CALIFORNIA CLASS members with a second mandated uninterrupted  
15 and duty-free meal period of not less than 30 minutes. Neither PLAINTIFFS nor the  
16 CALIFORNIA CLASS members consented to waive the mandated second duty-free meal period  
17 for those work shifts of more than 10 hours per day. Nevertheless, DEFENDANTS failed to  
18 provide PLAINTIFFS and the CALIFORNIA CLASS members with a one (1) additional hour of  
19 pay at PLAINTIFFS' and the CALIFORNIA CLASS members' regular rate of pay for each  
20 workday that it failed to provide PLAINTIFFS and the CALIFORNIA CLASS members with a  
21 second uninterrupted and duty-free meal period of not less than 30 minutes on shifts greater than  
22 ten hours. As a result of DEFENDANTS' aforementioned unlawful policy and practice,  
23 PLAINTIFFS and the CALIFORNIA CLASS members, from time-to-time, forfeited wages and  
24 compensation due and owed for each workday that DEFENDANTS failed to provide the second  
25 uninterrupted and duty-free meal period on shifts greater than ten hours. DEFENDANTS' policy  
26 and practice that failed to (a) provide a second uninterrupted and duty-free meal period to  
27 PLAINTIFFS and other CALIFORNIA CLASS members on work periods of greater than ten  
28 hours per day, or (b) pay the employee one (1) hour of pay at the employee's regular rate of



1 compensation for each workday that a meal period is not provided is evidenced by  
2 DEFENDANTS' business records.

3 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
4 Labor Codes, an employer shall authorize and permit all employees to take a rest period, which  
5 so far as practical shall be in the middle of each work period. Generally, an employer must provide  
6 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails  
7 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at  
8 the employee's regular rate of pay for each workday that the rest period is not provided.

9 19. During the CALIFORNIA CLASS PERIOD, from time to time, as a result of their  
10 overburdened work requirements, inadequate staffing and not being relieved of cordless  
11 communication devices during their shifts, PLAINTIFFS and other CALIFORNIA CLASS  
12 members were also required to work in excess of four (4) hours without being provided ten (10)  
13 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
14 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
15 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
16 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
17 (10) hours or more. PLAINTIFFS and other CALIFORNIA CLASS members were also not  
18 provided with one (1) hour wages in lieu thereof. As a result of their rigorous work schedules,  
19 PLAINTIFFS and other CALIFORNIA CLASS members were periodically denied their proper  
20 rest periods by DEFENDANTS and DEFENDANTS' managers.

21 **C. Inaccurately Calculated Meal and Rest Period Premiums**

22 20. From time to time, during the CALIFORNIA CLASS PERIOD, DEFENDANTS  
23 failed and continue to fail to accurately calculate and pay PLAINTIFFS and the other  
24 CALIFORNIA CLASS members their missed meal and rest period premiums. As a result,  
25 PLAINTIFFS and the other CALIFORNIA CLASS members forfeited wages due to them for  
26 their missed meal and rest periods without compensation at the correct missed meal and rest  
27 period rates. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS  
28

1 members the correct rate for all missed meal and rest period premium payment in accordance with  
2 applicable law is evidenced by DEFENDANTS' business records.

3 21. State law provides that employees must be paid premium hour of pay at the  
4 employee's "regular rate" of pay for each workday that the meal or rest period is not provided.  
5 PLAINTIFFS and other CALIFORNIA CLASS members were compensated at an hourly rate  
6 plus a flat-sum incentive pay that was tied to specific elements of an employee's performance.

7 22. The second component of PLAINTIFFS' and other CALIFORNIA CLASS  
8 members' compensation was DEFENDANTS' flat-sum non-discretionary incentive program that  
9 paid PLAINTIFFS and other CALIFORNIA CLASS members flat-sum incentive wages based on  
10 working certain shifts, i.e., premium shift differentials. The non-discretionary flat-sum shift  
11 differentials provided all employees paid on an hourly basis with flat-sum incentive  
12 compensation, i.e., shift differentials, when the employees worked certain shifts for  
13 DEFENDANTS. However, when calculating the regular rate of pay in order to pay missed rest  
14 and meal period premiums to PLAINTIFFS and other CALIFORNIA CLASS members,  
15 DEFENDANTS, from time to time, failed to include the flat-sum incentive compensation, i.e.,  
16 shift differentials, as part of the employees' "regular rate of pay" for purposes of calculating  
17 missed rest and meal period premiums. Management and supervisors described the flat-sum  
18 incentive program to potential and new employees as part of the compensation package. As a  
19 matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA  
20 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
21 in a systematic underpayment of premium pay for missed meal and rest periods to PLAINTIFFS  
22 and other CALIFORNIA CLASS members by DEFENDANTS.

23 23. In violation of the applicable sections of the California Labor Code and the  
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
25 matter of company policy, practice and procedure, intentionally and knowingly failed to  
26 compensate PLAINTIFFS and the other members CALIFORNIA CLASS members at the correct  
27 rate of pay for all missed meal and rest period premiums. This policy and practice of  
28 DEFENDANTS is intended to purposefully avoid the payment of the correct missed meal and

1 rest period premium compensation as required by California law which allowed DEFENDANTS  
2 to illegally profit and gain an unfair advantage over competitors who complied with the law. To  
3 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against  
4 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

5 **D. Inaccurate Itemized Wage Statements**

6 24. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS members  
7 missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or  
8 were paid overtime in the same pay period where they earned a non-discretionary flat-sum  
9 incentive award, DEFENDANTS also failed to provide PLAINTIFFS and the other members of  
10 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,  
11 among other things, the correct rates of pay, correct rates of pay for penalty payments or missed  
12 meal and rest periods. California Labor Code Section 226 provides that every employer shall  
13 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
14 among other things, gross wages earned and all applicable hourly rates in effect during the pay  
15 period and the corresponding amount of time worked at each hourly rate. Aside from the  
16 violations listed above in this paragraph, from time to time, DEFENDANTS failed to issue to  
17 PLAINTIFFS itemized wage statements that list all the requirements under California Labor Code  
18 226 et seq. As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other  
19 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
20 226.

21 25. By reason of this uniform conduct applicable to PLAINTIFFS and all  
22 CALIFORNIA CLASS members, DEFENDANTS committed acts of unfair competition in  
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the  
24 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately record  
25 all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA CLASS members.  
26 The proper recording of these employees’ missed meal and rest breaks is DEFENDANTS’  
27 burden. As a result of DEFENDANTS’ intentional disregard of the obligation to meet this burden,  
28 DEFENDANTS failed to properly calculate and/or pay all required compensation for work

1 performed by PLAINTIFFS and CALIFORNIA CLASS members and violated the California  
2 Labor Code and regulations promulgated thereunder as herein alleged.

3 26. To date, DEFENDANTS have not fully paid PLAINTIFFS all wages still owed to  
4 them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy  
5 for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

### 6 **JURISDICTION AND VENUE**

7 27. This Court has jurisdiction over this Action pursuant to California Code of Civil  
8 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.  
9 PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of all of  
10 DEFENDANTS current and former, non-exempt, Warehouse Associates, employed at the  
11 TRACY DISTRIBUTION CENTER at any time during the period beginning four (4) years prior  
12 to the filing of the Complaint and ending on the date as determined by the Court pursuant to Cal.  
13 Code of Civ. Proc. § 382.

14 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
15 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times,  
16 maintained offices and facilities in this County and/or conducts substantial business in this  
17 County, and (ii) committed the wrongful conduct herein alleged in this County against members  
18 of the CALIFORNIA CLASS.

### 19 **THE CALIFORNIA CLASS**

20 29. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive  
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
22 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a CALIFORNIA CLASS, again,  
23 defined as all of DEFENDANTS' current and former, non-exempt, employees assigned to the  
24 SSRS - System Wide Float Pool in California at any time during the period beginning four (4)  
25 years prior to the filing of the Complaint and ending on the date as determined by the Court.

26 30. PLAINTIFFS and other class members have uniformly been deprived of wages  
27 and penalties from unpaid wages earned and due, including but not limited to unpaid and  
28 miscalculated overtime compensation, miscalculated meal and rest period premiums, illegal meal

1 and rest period policies, failure to pay all wages due to discharged and quitting employees, failure  
2 to provide accurate itemized wage statements, failure to maintain required records, and interest,  
3 attorney's fees, costs, and expenses.

4 31. The members of the class are so numerous that joinder of all class members is  
5 impractical.

6 32. Common questions of law and fact regarding DEFENDANTS' conduct with  
7 respect to unpaid or miscalculated overtime wages paid to PLAINTIFFS and the other members  
8 of the CALIFORNIA CLASS, miscalculated missed meal and rest period premiums, and failing  
9 to provide legally compliant meal and rest periods, and failure to provide accurate itemized wage  
10 statements accurate, exist as to all members of the CALIFORNIA CLASS and predominate over  
11 any questions affecting solely any individual members of the class. Among the questions of law  
12 and fact common to the class are:

13 a. Whether DEFENDANTS failed to pay PLAINTIFFS and the members of  
14 the CALIFORNIA CLASS the correct rate of pay for all overtime hours worked;

15 b. Whether DEFENDANTS' flat-sum incentive compensation program, i.e.,  
16 premium shift differentials, is non-discretionary;

17 c. Whether DEFENDANTS miscalculated the regular rate of pay in those pay  
18 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime  
19 and earned a flat-sum bonus;

20 d. Whether DEFENDANTS miscalculated the regular rate of pay for missed  
21 meal and rest period premiums in those pay periods where PLAINITFFS and other  
22 CALIFORNIA CLASS members earned a flat-sum bonus and earned a meal or rest period  
23 premium payment from DEFENDANTS;

24 e. Whether DEFENDANTS' meal and rest period policies are legally  
25 compliant;

26 f. Whether DEFENDANTS failed to provide accurate itemized wage  
27 statements to PLAINTIFFS and the CALIFORNIA CLASS members  
28

1 g. Whether the members of the CALIFORNIA CLASS have been required to  
2 follow uniform procedures and policies regarding their work for DEFENDANTS;

3 33. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages  
4 as a result of DEFENDANTS' conduct and actions alleged herein.

5 34. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have  
6 the same interests as the other members of the class.

7 35. PLAINTIFFS will fairly and adequately represent and protect the interests of the  
8 class. PLAINTIFFS have retained able counsel experienced in class action litigation. The interests  
9 of PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other class  
10 members.

11 36. The questions of law and fact common to the members of the class predominate  
12 over any questions affecting only individual members, including legal and factual issues relating  
13 to liability and damages.

14 37. A class action is superior to other available methods for the fair and efficient  
15 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
16 since the damages suffered by individual members of the class may be relatively small, the  
17 expense and burden of individual litigation makes it practically impossible for the members of the  
18 class individually to redress the wrongs done to them. The class is readily definable and  
19 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.  
20 There will be no difficulty in the management of this action as a class action.

21 **THE CALIFORNIA LABOR SUB-CLASS**

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

1           39.     PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS members have  
2 uniformly been deprived of wages and penalties from unpaid wages earned and due, including  
3 but not limited to unpaid and miscalculated overtime compensation, miscalculated meal and rest  
4 period premiums, illegal meal and rest period policies, failure to pay all wages due to discharged  
5 and quitting employees, failure to provide accurate itemized wage statements, failure to maintain  
6 required records, and interest, attorney’s fees, costs, and expenses.

7           40.     The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
8 joinder of all class members is impractical.

9           41.     Common questions of law and fact regarding DEFENDANTS’ conduct with  
10 respect to the miscalculation of overtime wages paid to PLAINTIFFS and the other members of  
11 the CALIFORNIA LABOR SUB-CLASS, miscalculated missed meal and rest period premiums,  
12 and failing to provide legally compliant meal and rest periods, and failure to provide accurate  
13 itemized wage statements accurate, exist as to all members of the class and predominate over any  
14 questions affecting solely any individual members of the class. Among the questions of law and  
15 fact common to the class are:

16           a.     Whether DEFENDANTS’ flat-sum incentive compensation program is  
17 non-discretionary;

18           b.     Whether DEFENDANTS miscalculated the regular rate of pay in those pay  
19 periods where PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS worked  
20 overtime and earned a flat-sum bonus;

21           c.     Whether DEFENDANTS miscalculated the regular rate of pay for missed  
22 meal and rest period premiums in those pay periods where PLAINTIFFS and other  
23 CALIFORNIA LABOR SUB-CLASS earned a flat-sum bonus and earned a meal or rest  
24 period premium payment from DEFENDANTS;

25           d.     Whether DEFENDANTS’ meal and rest period policies are legally  
26 compliant;

27           e.     Whether DEFENDANTS failed to provide accurate itemized wage  
28 statements to PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members.

1 f. Whether CALIFORNIA LABOR SUB-CLASS members have been  
2 required to follow uniform procedures and policies regarding their work for  
3 DEFENDANTS;

4 42. PLAINTIFFS are members of the CALIFORNIA LABOR SUB-CLASS who  
5 suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

6 43. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have  
7 the same interests as the other members of the class.

8 44. PLAINTIFFS will fairly and adequately represent and protect the interests of the  
9 class. PLAINTIFFS have retained able counsel experienced in class action litigation. The  
10 interests of PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other  
11 members of the CALIFORNIA LABOR SUB-CLASS.

12 45. The questions of law and fact common to the members of the class predominate  
13 over any questions affecting only individual members, including legal and factual issues relating  
14 to liability and damages.

15 46. A class action is superior to other available methods for the fair and efficient  
16 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
17 since the damages suffered by individual members of the class may be relatively small, the  
18 expense and burden of individual litigation makes it practically impossible for the members of  
19 the class individually to redress the wrongs done to them. The class is readily definable and  
20 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.  
21 There will be no difficulty in the management of this action as a class action.

22 **FIRST CAUSE OF ACTION**

23 **UNLAWFUL BUSINESS PRACTICES**

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

25 **(By PLAINTIFFS and the CALIFORNIA CLASS against DEFENDANTS)**

26 47. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
28 Complaint.



1           48.     DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And  
2 Prof. Code § 17021.

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

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

16 (Cal. Bus. & Prof. Code § 17203).

17           50.     By the conduct alleged herein, DEFENDANTS have engaged and continues to  
18 engage in a business practice which violates California law, including but not limited to, the  
19 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
20 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this  
21 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §  
22 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
23 competition, including restitution of wages wrongfully withheld.

24           51.     By the conduct alleged herein, DEFENDANTS’ practices were unlawful and  
25 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
26 unscrupulous or substantially injurious to employees, and were without valid justification or  
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203  
28

1 of the California Business & Professions Code, including restitution of wages wrongfully  
2 withheld.

3 52. By the conduct alleged herein, DEFENDANTS' practices were deceptive and  
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFFS, and  
5 other members of the CALIFORNIA CLASS wages due pursuant to the applicable Cal. Lab.  
6 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200,  
7 *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.  
8 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

13 54. By the conduct alleged herein, DEFENDANTS' practices were also unfair and  
14 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide  
15 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

16 55. Therefore, PLAINTIFFS demand on behalf of herself and on behalf of each  
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
18 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
19 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
20 hours of work.

21 56. PLAINTIFFS further demand on behalf of herself and on behalf of each  
22 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
23 not timely provided as required by law.

24 57. By and through the unlawful and unfair business practices described herein,  
25 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and  
26 the other members of the CALIFORNIA CLASS, including earned wages, and has deprived them  
27 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these  
28

1 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly  
2 compete against competitors who comply with the law.

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

8 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled  
9 to, and do, seek such relief as may be necessary to restore to them the money and property which  
10 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the  
11 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
12 business practices, including earned but unpaid wages.

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

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

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 9-2001, § 4)**

27 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)**

28

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

4           63.     PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
5 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
6 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately  
7 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS  
8 Members.

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

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

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

16           67.     DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and  
17 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
18 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice  
19 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the  
20 other members of the CALIFORNIA LABOR SUB-CLASS.

21           68.     DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
22 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
23 of implementing a uniform policy and practice that denies accurate compensation to  
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
25 minimum wage pay.

26           69.     In committing these violations of the California Labor Code, DEFENDANTS,  
27 from time to time, inaccurately calculated the time worked and consequently underpaid the actual  
28 time worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.

1 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other  
2 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
3 requirements and other applicable laws and regulations.

4 70. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
5 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
6 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

10 72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
11 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
12 CLASS for the true time they worked, PLAINTIFFS and the other members of the  
13 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
14 injury in amounts which are presently unknown to them and which will be ascertained according  
15 to proof at trial.

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

23 74. In performing the acts and practices herein alleged in violation of California labor  
24 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all  
25 time worked and provide them with requisite compensation, DEFENDANTS acted and continue  
26 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members  
27 of the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal  
28 rights, or the consequences to them, and with the despicable intent of depriving them of their

1 property and legal rights, and otherwise causing them injury in order to increase company profits  
2 at the expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION**

16 **(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 9-2001, §3)**

17 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS)**

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

21 77. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
22 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
23 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly  
24 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,  
25 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in  
26 any workweek.

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

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

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

9           81.     From time to time, during the CALIFORNIA LABOR SUB-CLASS PERIOD,  
10 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS members were required by  
11 DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked,  
12 including overtime work.

13           82.     DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
14 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
15 of implementing a uniform policy and practice that failed to accurately record overtime worked  
16 by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
17 denied accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA  
18 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight  
19 (8) hours in a workday and/or forty (40) hours in any workweek.

20           83.     In committing these violations of the California Labor Code, DEFENDANTS  
21 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in  
22 violation of the California Labor Code, the Industrial Welfare Commission requirements and  
23 other applicable laws and regulations.

24           84.     As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
25 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
26 receive full compensation for all overtime worked.

27           85.     Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
28 from the overtime requirements of the law. None of these exemptions are applicable to

1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further  
2 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not  
3 subject to a valid collective bargaining agreement that would preclude the causes of action  
4 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of herself and  
5 the CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-  
6 negotiable, non-waivable rights provided by the State of California.

7 86. From time to time during the CALIFORNIA LABOR SUB-CLASS PERIOD,  
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were paid  
9 less for time worked than they were entitled to, constituting a failure to pay all earned wages.

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

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

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



1 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the  
2 applicable overtime rate.

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

24 **(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 9-2001, §11)**

25 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS)**

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





1           b. Total hours worked by the employee, except for any employee whose  
2 compensation is solely based on a salary and who is exempt from payment of overtime  
3 under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
4 Commission;

5           c. The number of piece rate units earned and any applicable piece rate if the  
6 employee is paid on a piece-rate basis;

7           d. All deductions, provided that all deductions made on written orders of the  
8 employee may be aggregated and shown as one item;

9           e. Net wages earned;

10          f. The inclusive dates of the period for which the employee is paid;

11          g. The name of the employee and his or her social security number, except  
12 that by January 1, 2008, only the last four digits of his or her social security number or an  
13 employee identification number other than a social security number may be shown on the  
14 itemized statement;

15          h. The name and address of the legal entity that is the employer; and

16          i. All applicable hourly rates in effect during the pay period and the  
17 corresponding number of hours worked at each hourly rate by the employee.

18       102. When DEFENDANTS did not accurately record PLAINTIFFS' and other  
19 CALIFORNIA LABOR SUB-CLASS members' missed meal and rest breaks, DEFENDANTS  
20 also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS with complete and accurate wage statements which failed to show, among other things,  
22 missed meal and rest periods owed to PLAINTIFFS and other CALIFORNIA LABOR SUB-  
23 CLASS members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his  
24 or her employees with an accurate itemized wage statement in writing showing, among other  
25 things, gross wages earned and all applicable hourly rates in effect during the pay period and the  
26 corresponding amount of time worked at each hourly rate. Aside from the violations listed above  
27 in this paragraph, DEFENDANTS, from time to time, failed to issue to PLAINTIFFS an itemized  
28 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,

1 from time to time DEFENDANTS provided PLAINTIFFS and the other members of the  
2 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code §  
3 226.

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

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

18 **(By PLAINTIFF TANYA DEL RIO and the CALIFORNIA LABOR SUB-CLASS and**  
19 **DEFENDANTS)**

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

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

24 As used in this article:(a) "Wages" includes all amounts for labor  
25 performed by employees of every description, whether the amount  
26 is fixed or ascertained by the standard of time, task, piece,  
27 Commission basis, or other method of calculation. (b) "Labor"  
28 includes labor, work, or service whether rendered or performed

1 under contract, subcontract, partnership, station plan, or other  
2 agreement if the labor to be paid for is performed personally by the  
3 person demanding payment.

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

7 107. Cal. Lab. Code § 202 provides, in relevant part, that:  
8 If an employee not having a written contract for a definite period  
9 quits his or her employment, his or her wages shall become due and  
10 payable not later than 72 hours thereafter, unless the employee has  
11 given 72 hours previous notice of his or her intention to quit, in  
12 which case the employee is entitled to his or her wages at the time  
13 of quitting. Notwithstanding any other provision of law, an  
14 employee who quits without providing a 72-hour notice shall be  
15 entitled to receive payment by mail if he or she so requests and  
16 designates a mailing address. The date of the mailing shall constitute  
17 the date of payment for purposes of the requirement to provide  
18 payment within 72 hours of the notice of quitting.

19 108. There was no definite term in PLAINTIFF TANYA DEL RIO or any  
20 CALIFORNIA LABOR SUB-CLASS members’ employment contract.

21 109. Cal. Lab. Code § 203 provides:  
22 If an employer willfully fails to pay, without abatement or reduction,  
23 in accordance with Sections 201, 201.5, 202, and 205.5, any wages  
24 of an employee who is discharged or who quits, the wages of the  
25 employee shall continue as a penalty from the due date thereof at the  
26 same rate until paid or until an action therefor is commenced; but  
27 the wages shall not continue for more than 30 days.

28

1 110. The employment of PLAINTIFF TANYA DEL RIO and many CALIFORNIA  
2 LABOR SUB-CLASS members terminated and DEFENDANTS have not tendered payment of  
3 wages, to these employees who missed meal and rest breaks or were underpaid for overtime, as  
4 required by law.

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and  
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

19 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully  
20 withheld from compensation due to PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS; and

22 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid  
23 fund for restitution of the sum incidental to DEFENDANT's violations due to  
24 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

26 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
27 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
28 action pursuant to Cal. Code of Civ. Proc. § 382;

1           b.       Compensatory damages, according to proof at trial, including compensatory  
2 damages for minimum wages and other compensation due to PLAINTIFFS and the other  
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

5           c.       Liquidated damages, according to proof at trial, on the second cause of  
6 action for minimum wage violations;

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

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

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

17       3.       On all claims:

18           a.       An award of interest, including prejudgment interest at the legal rate;

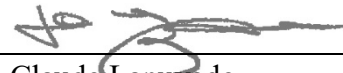
19           b.       Such other and further relief as the Court deems just and equitable; and

20           c.       An award of penalties, attorneys' fees and costs of suit, as allowable under  
21 the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or  
22 §1197.

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DATED: July 15, 2019

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lapuyade  
Attorneys for Plaintiffs




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**DEMAND FOR A JURY TRIAL**

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

DATED: July 15, 2019

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lapuyade  
Attorneys for Plaintiffs