

SUMMONS (CITACION JUDICIAL)

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/03/2021 at 10:48:55 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

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

VULCAN MATERIALS COMPANY, a New Jersey Corporation; CALMAT CO., a Delaware Corporation; and DOES 1-50, Inclusive,

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

GABRIEL GUZMAN JR., on behalf of himself and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

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

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

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

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

CASE NUMBER: (Número del Caso):
37-2021-00024583-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):

Shani O. Zakay, Esq. Zakay Law Group, APLC. 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 T: 619-255-9047

DATE: 06/04/2021
(Fecha)

Clerk, by *C. Miranda*, Deputy
(Secretario) C. Miranda (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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date)

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9 Attorneys for Plaintiffs

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

12 GABRIEL GUZMAN JR., on behalf of
13 himself and on behalf of all persons similarly
situated,

14 Plaintiffs,

15 v.

16 VULCAN MATERIALS COMPANY, a
17 New Jersey Corporation; CALMAT CO., a
Delaware Corporation; and DOES 1-50,
18 Inclusive,

19 DEFENDANTS.

Case No: 37-2021-00024583-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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Gabriel Guzman Jr. an individual, (“PLAINTIFF”), on behalf of himself and all
2 other similarly situated current and former employees, allege on information and belief, except
3 for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant VULCAN MATERIALS COMPANY (“Defendant Vulcan”) is
6 Corporation and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. Defendant CALMAT CO. (“Defendant Calmat”) is a Corporation and at all
9 relevant times mentioned herein conducted and continues to conduct substantial and regular
10 business throughout California.

11 3. Defendant Vulcan and Defendant Calmat were the joint employers of PLAINTIFF
12 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for
13 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
14 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

15 4. DEFENDANTS operate a business which produces construction aggregates like
16 crushed stone, sand, gravel, asphalt, and ready-mixed concrete for its clients, including the San
17 Diego, California location where PLAINTIFF worked.

18 5. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
19 employee entitled to minimum wages, overtime pay and meal and rest periods from April of 2020
20 to November of 2020.

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

28 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
2 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS’
3 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
4 whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
7 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
8 who have been economically injured by DEFENDANTS’ past and current unlawful conduct, and
9 all other appropriate legal and equitable relief.

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

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

27 ///

28 ///

THE CONDUCT

1
2 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically, PLAINTIFF
8 performed work before and after the beginning of his shift, spending time under DEFENDANTS’
9 control for which he was not compensated. As a result, the PLAINTIFF and other CALIFORNIA
10 CLASS Members forfeited minimum wage and overtime compensation by regularly working
11 without their time being accurately recorded and without compensation at the applicable
12 minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice not to pay
13 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
14 DEFENDANTS’ business records.

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

19 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
20 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
21 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
22 performance for DEFENDANTS. The non-discretionary incentive program provided all
23 employees paid on an hourly basis with incentive compensation when the employees met the
24 various performance goals set by DEFENDANTS. However, when calculating the regular rate
25 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
26 DEFENDANTS failed to include the incentive compensation as part of the employees’ “regular
27 rate of pay” for purposes of calculating overtime pay. Management and supervisors described the
28 incentive program to potential and new employees as part of the compensation package. However,

1 DEFENDANTS failed to include incentive compensation into the “regular rate of pay” for
2 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
3 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate of
4 pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation
5 to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANTS.

6 13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were also from time to time unable to take off duty meal breaks and were not
8 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
9 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
10 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
11 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
12 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
13 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
14 these employees were required by DEFENDANTS to work ten (10) hours of work.
15 DEFENDANTS’ policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
16 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
17 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
18 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy
19 and practice.

20 14. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
21 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
22 without being provided ten (10) minute rest periods. Further, these employees were denied their
23 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
24 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
25 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
27 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
28 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity

1 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
2 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in
3 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS
4 Members were also not provided with one hour wages in lieu thereof. DEFENDANTS' policy
5 caused PLAINTIFF and other CALIFORNIA CLASS Members to remain on-call and on-duty
6 during what was supposed to be their off-duty rest periods. As a result of their rigorous work
7 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
8 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

9 15. Under California law, every employer shall pay to each employee, on the
10 established payday for the period involved, not less than the applicable minimum wage for all
11 hours worked in the payroll period, whether the remuneration is measured by time, piece,
12 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
13 during which an employee is subject to the control of an employer and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
15 other CALIFORNIA CLASS Members were from time to time required to perform work for
16 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
17 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
18 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
19 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
20 the applicable minimum wage for all hours worked in a payroll period.

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

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

3 17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
4 worked during what was supposed to be their meal breaks or otherwise off the clock,
5 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA
6 CLASS with complete and accurate wage statements which failed to show, among other things,
7 the correct time worked, including, work performed in excess of eight (8) hours in a workday
8 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
9 pay period, and the correct penalty payments or missed meal and rest periods in violation of
10 California Labor Code Sections 226 and 226.2.

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

19 19. Aside from the violations listed herein, DEFENDANTS failed to issue to
20 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
21 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
22 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
23 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS included items,
24 including but not limited to "COVID Pay," "California Sick Pay," and "Meal Period Penalty
25 Hourly" to the total hours worked. However, the foregoing items are not considered total hours
26 worked for purposes of California Labor Code Section 226(a)(2). Further, DEFENDANTS from
27 time to time failed to issue an itemized wage statement to PLAINTIFF and other members of the
28 CALIFORNIA CLASS that included the total hours worked at the applicable hourly rate. As a

1 result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

25 22. By reason of this uniform conduct applicable to PLAINTIFF and all
26 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
27 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
28 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately

1 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
2 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
3 rates is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the
4 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
5 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
6 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

7 23. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
8 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
9 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
10 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
11 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
12 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
13 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
14 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during
15 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
16 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
17 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that
18 failed to accurately display PLAINTIFF's correct time worked and wages, as well as payments
19 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
20 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed
21 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
22 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

23 **JURISDICTION AND VENUE**

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

28

1 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
2 PERIOD and still fails to have in place a policy or practice to ensure that each and every
3 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
4 common business practice applicable to each and every CALIFORNIA CLASS Member can be
5 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
6 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
7 elements of this claim.

8 30. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
14 policies, practices and procedures that failed to pay all wages due the
15 CALIFORNIA CLASS for all time worked;
- 16 b. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
19 members;
- 20 c. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
22 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
23 members with necessary expenses incurred in the discharge of their job duties; and
- 24 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
26 company policies, practices and procedures that uniformly and systematically
27 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
28

1 CLASS for all time worked, including minimum wages owed and overtime wages
2 owed for work performed by these employees.

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

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

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

11 c. The claims of the representative PLAINTIFF are typical of the claims of each
12 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
13 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
14 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
15 policy which failed to provide the legally required meal and rest periods to the
16 CALIFORNIA CLASS and thereby systematically underpaid compensation to
17 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
18 as a result of DEFENDANTS’ employment practices. PLAINTIFF, like all the
19 other members of the CALIFORNIA CLASS, were subjected to the uniform
20 employment practices of DEFENDANTS and was a non-exempt employee paid
21 on an hourly basis and paid additional non-discretionary incentive wages who was
22 subjected to the DEFENDANTS’ practice and policy which failed to pay the
23 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
24 worked by the CALIFORNIA CLASS and thereby systematically under pays
25 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
26 members of the CALIFORNIA CLASS were and are similarly or identically
27 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
28 misconduct engaged in by DEFENDANTS; and

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

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

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

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA CLASS which would establish incompatible
15 standards of conduct for the parties opposing the CALIFORNIA CLASS;
16 and/or;

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFF seek declaratory relief holding that

1 the DEFENDANTS' policy and practices constitute unfair competition,
2 along with declaratory relief, injunctive relief, and incidental equitable
3 relief as may be necessary to prevent and remedy the conduct declared to
4 constitute unfair competition;

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

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

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

19 1. Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS, which would establish
21 incompatible standards of conduct for the DEFENDANTS; and/or;

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

27 iii. In the context of wage litigation, because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting their legal

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rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and

1 in obtaining adequate compensation for the damages and injuries which
2 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

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

1 37. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
5 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
6 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
7 benefit of this work, required employees to perform this work and permitted or suffered to permit
8 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
9 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
10 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
11 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
12 CLASS PERIOD should be adjusted accordingly.

13 38. DEFENDANTS maintain records from which the Court can ascertain and identify
14 by name and job title, each of DEFENDANTS’ employees who 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 any
17 additional job titles of similarly situated employees when they have been identified.

18 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
19 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 22 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
24 missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- 1 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
- 5 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
- 6 California Labor Code and California regulations and the applicable California
- 7 Wage Order;
- 8 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 9 compensation for time worked, including overtime worked, under the overtime
- 10 pay requirements of California law;
- 11 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 12 conduct;
- 13 g. The proper measure of damages and penalties owed to the members of the
- 14 CALIFORNIA LABOR SUB-CLASS; and
- 15 h. Whether DEFENDANTS' conduct was willful.

16 41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
17 under California law by:

- 18 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
- 19 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 20 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 21 § 1194;
- 22 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 23 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 24 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 25 Cal. Lab. Code §§ 1194 and 1197;
- 26 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 27 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 28 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate rates in effect during the pay period and
4 the corresponding amount of time worked at each overtime rate by the employee;
- 5 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
6 CALIFORNIA CLASS members with necessary expenses incurred in the
7 discharge of their job duties;
- 8 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
9 employee is discharged or quits from employment, the employer must pay the
10 employee all wages due without abatement, by failing to tender full payment
11 and/or restitution of wages owed or in the manner required by California law to
12 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
13 their employment.

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

- 16 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
17 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
18 is impracticable and the disposition of their claims as a class will benefit the parties
19 and the Court;
- 20 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
21 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
22 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
23 CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each
25 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
27 employee paid on an hourly basis and paid additional non-discretionary incentive
28 wages who was subjected to the DEFENDANTS' practice and policy which failed

1 to pay the correct rate of overtime wages and total amount of wages due to the
2 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
3 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
4 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
6 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to

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the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

8 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

3 50. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
7 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
8 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
10 wrongfully withheld.

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

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

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

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

26 55. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
3 against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

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

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

60. 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.

61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

62. 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.

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

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

65. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

66. DEFENDANTS’ 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 denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

10 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
12 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

3 73. PLAINTIFF 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 LABOR
11 SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
12 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
13 are entitled to seek and recover statutory costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME COMPENSATION**
15 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
17 **DEFENDANTS)**

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

21 75. PLAINTIFF 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 accurately
24 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
26 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
27 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

28 76. 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.

1 77. 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 workweek
3 unless they receive additional compensation beyond their regular wages in amount specified by
4 law.

5 78. 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 79. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
11 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
12 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
14 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
15 to pay these employees the correct applicable overtime wages for all overtime worked.

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

22 81. In committing these violations of the California Labor Code, DEFENDANTS
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the
27 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

1 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
2 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
3 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
5 bargaining agreement that would preclude the causes of action contained herein this Complaint.
6 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR
7 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
8 provided by the State of California.

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

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

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

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

1 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
2 not prevent these employees from being relieved of all of their duties for the legally required off-
3 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
5 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
6 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
7 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
8 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
9 therefore forfeited meal breaks without additional compensation and in accordance with
10 DEFENDANTS' strict corporate policy and practice.

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

21 **(Cal. Lab. Code §§ 226.7 & 512)**

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **DEFENDANTS)**

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

27 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
Further, these employees were denied their first rest periods of at least ten (10) minutes for some
shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)

1 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
4 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
5 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
6 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
8 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
9 DEFENDANTS' premises for those rest breaks.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

20 **(Cal. Lab. Code §§ 226 and 226.2)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
22 DEFENDANTS)**

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

26 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
27 "accurate itemized" statement in writing showing:

- 28 a. Gross wages earned;

- 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
- 3 overtime under subdivision (a) of Section 515 or any applicable order of the
- 4 Industrial Welfare Commission;
- 5 c. The number of piece rate units earned and any applicable piece rate if the employee
- 6 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 that by
- 12 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
- 14 on the 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 corresponding
- 17 number of hours worked at each hourly rate by the employee.

18 100. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
19 employees with an “accurate itemized” statement in writing showing:

- 20 a. The total hours of compensable rest and recovery periods, the rate of
- 21 compensation, and the gross wages paid for those periods during the
- 22 pay period; and
- 23 b. The total hours of other nonproductive time, the rate of
- 24 compensation, and the gross wages paid for that time during the pay
- 25 period.

26 101. When DEFENDANTS did not accurately record PLAINTIFF’S and other
27 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also
28 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete

1 and accurate wage statements which failed to show, among other things, the correct overtime rate,
2 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other
3 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
4 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
5 among other things, gross wages earned and all applicable hourly rates in effect during the pay
6 period and the corresponding amount of time worked at each hourly rate. Aside from the
7 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 From time to time DEFENDANTS violated California Labor Code Section 226(a)(2) by failing
10 to provide an accurate amount of total hours worked by PLAINTIFF and other members of the
11 CALIFORNIA CLASS. Specifically, DEFENDANTS included items, including but not limited
12 to “COVID Pay,” “California Sick Pay,” and “Meal Period Penalty Hourly” to the total hours
13 worked. However, the foregoing items are not considered total hours worked for purposes of
14 California Labor Code Section 226(a)(2). Further, DEFENDANTS from time to time failed to
15 issue an itemized wage statement to PLAINTIFF and other members of the CALIFORNIA
16 CLASS that included the total hours worked at the applicable hourly rate. As a result, from time
17 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
18 CLASS with wage statements which violated Cal. Lab. Code § 226.

19 102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct rates for the overtime worked and the amount of employment
23 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
24 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
26 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
27 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
28

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

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

5 **(Cal. Lab. Code §§ 2802)**

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

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

11 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

17 105. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
18 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
21 CLASS members for expenses which included, but were not limited to, costs related to using their
22 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
23 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
24 their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and
25 procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 members for expenses resulting from using their personal cellular phones for DEFENDANTS
27 within the course and scope of their employment for DEFENDANTS. These expenses were
28 necessary to complete their principal job duties. DEFENDANTS are estopped by
DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the
2 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
3 do under the laws and regulations of California.

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

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

16 108. Cal. Lab. Code § 200 provides that:

17 As used in this article:(a) "Wages" includes all amounts for labor performed by
18 employees of every description, whether the amount is fixed or ascertained by the
19 standard of time, task, piece, Commission basis, or other method of calculation. (b)
20 "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

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

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

1 mail if he or she so requests and designates a mailing address. The date of the
2 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

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

5 112. Cal. Lab. Code § 203 provides:

6 If an employer willfully fails to pay, without abatement or reduction, in accordance
7 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
8 discharged or 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.

9 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
10 Members terminated and DEFENDANTS have not tendered payment of wages, to these
11 employees who missed meal and rest breaks, as required by law.

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

18 **NINTH CAUSE OF ACTION**

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

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

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

22 115. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 116. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 117. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by Defendant Vulcan and/or
9 Defendant Calmat and classified as non-exempt employees in California during the time period
10 of March 30, 2020 until the present (the "AGGRIEVED EMPLOYEES").

11 118. On March 30, 2021, PLAINTIFF gave written notice by certified mail to the Labor
12 and Workforce Development Agency (the "Agency") and the employer of the specific
13 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
14 **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting
15 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
16 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
17 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 119. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
21 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
22 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
23 failed to provide accurate itemized wage statements, (d) failed to reimburse for required business
24 expenses, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections
25 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203,
26 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
27 1197.1, 1197.14, 1198, 1199, 2802, and the applicable Industrial Wage Order(s), and thereby
28 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of

1 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
2 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
3 the other AGGRIEVED EMPLOYEES.

4 120. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
7 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
8 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
9 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
10 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

11
12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
28 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class

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- action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, unreimbursed expenses, and other 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 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; and,
 - 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.
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, §1194, §1197 and/or §2802.

///
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1 DATED: June 3, 2021

2
3 **ZAKAY LAW GROUP, APLC**

4 By:  _____

5 Shani O. Zakay
6 Attorney for Plaintiffs

7
8 **DEMAND FOR A JURY TRIAL**

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

10 DATED: June 3, 2021

11 **ZAKAY LAW GROUP, APLC**

12
13 By:  _____

14
15 Shani O. Zakay
16 Attorney for Plaintiffs

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EXHIBIT 1



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March 30, 2021

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

VULCAN MATERIALS COMPANY
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt

CALMAT CO.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents GABRIEL GUZMAN JR. (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against VULCAN MATERIALS COMPANY and CALMAT CO. (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants in California from April of 2020 to November of 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

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8 Attorneys for Plaintiffs

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

11 GABRIEL GUZMAN JR., on behalf of
12 himself and on behalf of all persons similarly
situated,

13 Plaintiffs,

14 v.

15 VULCAN MATERIALS COMPANY, a
16 New Jersey Corporation; CALMAT CO., a
Delaware Corporation; and DOES 1-50,
17 Inclusive,

18 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Gabriel Guzman Jr. an individual, (“PLAINTIFF”), on behalf of himself and all
2 other similarly situated current and former employees, allege on information and belief, except
3 for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant VULCAN MATERIALS COMPANY (“Defendant Vulcan”) is
6 Corporation and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. Defendant CALMAT CO. (“Defendant Calmat”) is a Corporation and at all
9 relevant times mentioned herein conducted and continues to conduct substantial and regular
10 business throughout California.

11 3. Defendant Vulcan and Defendant Calmat were the joint employers of PLAINTIFF
12 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for
13 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
14 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

15 4. DEFENDANTS operate a business which produces construction aggregates like
16 crushed stone, sand, gravel, asphalt, and ready-mixed concrete for its clients, including the San
17 Diego, California location where PLAINTIFF worked.

18 5. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
19 employee entitled to minimum wages, overtime pay and meal and rest periods from April of 2020
20 to November of 2020.

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

28 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
2 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS'
3 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
4 whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
7 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
8 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
9 all other appropriate legal and equitable relief.

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

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

27 ///

28 ///

THE CONDUCT

1
2 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically, PLAINTIFF
8 performed work before and after the beginning of his shift, spending time under DEFENDANTS’
9 control for which he was not compensated. As a result, the PLAINTIFF and other CALIFORNIA
10 CLASS Members forfeited minimum wage and overtime compensation by regularly working
11 without their time being accurately recorded and without compensation at the applicable
12 minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice not to pay
13 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
14 DEFENDANTS’ business records.

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

19 12. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
20 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
21 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
22 performance for DEFENDANTS. The non-discretionary incentive program provided all
23 employees paid on an hourly basis with incentive compensation when the employees met the
24 various performance goals set by DEFENDANTS. However, when calculating the regular rate
25 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
26 DEFENDANTS failed to include the incentive compensation as part of the employees’ “regular
27 rate of pay” for purposes of calculating overtime pay. Management and supervisors described the
28 incentive program to potential and new employees as part of the compensation package. However,

1 DEFENDANTS failed to include incentive compensation into the “regular rate of pay” for
2 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
3 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate of
4 pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation
5 to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANTS.

6 13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were also from time to time unable to take off duty meal breaks and were not
8 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
9 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
10 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
11 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
12 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
13 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
14 these employees were required by DEFENDANTS to work ten (10) hours of work.
15 DEFENDANTS’ policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
16 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
17 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
18 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy
19 and practice.

20 14. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
21 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
22 without being provided ten (10) minute rest periods. Further, these employees were denied their
23 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
24 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
25 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
27 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
28 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity

1 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
2 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in
3 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS
4 Members were also not provided with one hour wages in lieu thereof. DEFENDANTS' policy
5 caused PLAINTIFF and other CALIFORNIA CLASS Members to remain on-call and on-duty
6 during what was supposed to be their off-duty rest periods. As a result of their rigorous work
7 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
8 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

9 15. Under California law, every employer shall pay to each employee, on the
10 established payday for the period involved, not less than the applicable minimum wage for all
11 hours worked in the payroll period, whether the remuneration is measured by time, piece,
12 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
13 during which an employee is subject to the control of an employer and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
15 other CALIFORNIA CLASS Members were from time to time required to perform work for
16 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
17 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
18 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
19 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
20 the applicable minimum wage for all hours worked in a payroll period.

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

3 17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
4 worked during what was supposed to be their meal breaks or otherwise off the clock,
5 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA
6 CLASS with complete and accurate wage statements which failed to show, among other things,
7 the correct time worked, including, work performed in excess of eight (8) hours in a workday
8 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
9 pay period, and the correct penalty payments or missed meal and rest periods in violation of
10 California Labor Code Sections 226 and 226.2.

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

19 19. Aside from the violations listed herein, DEFENDANTS failed to issue to
20 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
21 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
22 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
23 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS included items,
24 including but not limited to "COVID Pay," "California Sick Pay," and "Meal Period Penalty
25 Hourly" to the total hours worked. However, the foregoing items are not considered total hours
26 worked for purposes of California Labor Code Section 226(a)(2). Further, DEFENDANTS from
27 time to time failed to issue an itemized wage statement to PLAINTIFF and other members of the
28 CALIFORNIA CLASS that included the total hours worked at the applicable hourly rate. As a

1 result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

25 22. By reason of this uniform conduct applicable to PLAINTIFF and all
26 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
27 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
28 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately

1 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
2 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
3 rates is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the
4 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
5 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
6 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

7 23. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
8 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
9 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
10 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
11 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
12 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
13 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
14 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during
15 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
16 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
17 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that
18 failed to accurately display PLAINTIFF's correct time worked and wages, as well as payments
19 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
20 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed
21 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
22 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

23 **JURISDICTION AND VENUE**

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

1 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
2 PERIOD and still fails to have in place a policy or practice to ensure that each and every
3 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
4 common business practice applicable to each and every CALIFORNIA CLASS Member can be
5 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
6 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
7 elements of this claim.

8 30. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
14 policies, practices and procedures that failed to pay all wages due the
15 CALIFORNIA CLASS for all time worked;
- 16 b. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
19 members;
- 20 c. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
22 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
23 members with necessary expenses incurred in the discharge of their job duties; and
- 24 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
26 company policies, practices and procedures that uniformly and systematically
27 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
28

1 CLASS for all time worked, including minimum wages owed and overtime wages
2 owed for work performed by these employees.

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

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

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

11 c. The claims of the representative PLAINTIFF are typical of the claims of each
12 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
13 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
14 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
15 policy which failed to provide the legally required meal and rest periods to the
16 CALIFORNIA CLASS and thereby systematically underpaid compensation to
17 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
18 as a result of DEFENDANTS’ employment practices. PLAINTIFF, like all the
19 other members of the CALIFORNIA CLASS, were subjected to the uniform
20 employment practices of DEFENDANTS and was a non-exempt employee paid
21 on an hourly basis and paid additional non-discretionary incentive wages who was
22 subjected to the DEFENDANTS’ practice and policy which failed to pay the
23 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
24 worked by the CALIFORNIA CLASS and thereby systematically under pays
25 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
26 members of the CALIFORNIA CLASS were and are similarly or identically
27 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
28 misconduct engaged in by DEFENDANTS; and

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

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

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

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA CLASS which would establish incompatible
15 standards of conduct for the parties opposing the CALIFORNIA CLASS;
16 and/or;

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFF seek declaratory relief holding that

1 the DEFENDANTS' policy and practices constitute unfair competition,
2 along with declaratory relief, injunctive relief, and incidental equitable
3 relief as may be necessary to prevent and remedy the conduct declared to
4 constitute unfair competition;

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

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

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

19 1. Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS, which would establish
21 incompatible standards of conduct for the DEFENDANTS; and/or;

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

27 iii. In the context of wage litigation, because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting their legal

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rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and

1 in obtaining adequate compensation for the damages and injuries which
2 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

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

1 37. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
5 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
6 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
7 benefit of this work, required employees to perform this work and permitted or suffered to permit
8 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
9 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
10 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
11 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
12 CLASS PERIOD should be adjusted accordingly.

13 38. DEFENDANTS maintain records from which the Court can ascertain and identify
14 by name and job title, each of DEFENDANTS’ employees who 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 any
17 additional job titles of similarly situated employees when they have been identified.

18 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
19 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 22 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
24 missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- 1 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
- 5 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
- 6 California Labor Code and California regulations and the applicable California
- 7 Wage Order;
- 8 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 9 compensation for time worked, including overtime worked, under the overtime
- 10 pay requirements of California law;
- 11 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 12 conduct;
- 13 g. The proper measure of damages and penalties owed to the members of the
- 14 CALIFORNIA LABOR SUB-CLASS; and
- 15 h. Whether DEFENDANTS' conduct was willful.

16 41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
17 under California law by:

- 18 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
- 19 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 20 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 21 § 1194;
- 22 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 23 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 24 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 25 Cal. Lab. Code §§ 1194 and 1197;
- 26 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 27 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 28 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate rates in effect during the pay period and
4 the corresponding amount of time worked at each overtime rate by the employee;
- 5 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
6 CALIFORNIA CLASS members with necessary expenses incurred in the
7 discharge of their job duties;
- 8 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
9 employee is discharged or quits from employment, the employer must pay the
10 employee all wages due without abatement, by failing to tender full payment
11 and/or restitution of wages owed or in the manner required by California law to
12 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
13 their employment.

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

- 16 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
17 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
18 is impracticable and the disposition of their claims as a class will benefit the parties
19 and the Court;
- 20 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
21 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
22 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
23 CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each
25 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
27 employee paid on an hourly basis and paid additional non-discretionary incentive
28 wages who was subjected to the DEFENDANTS' practice and policy which failed

1 to pay the correct rate of overtime wages and total amount of wages due to the
2 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
3 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
4 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
6 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to

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the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

8 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

3 50. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
7 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
8 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
9 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
10 wrongfully withheld.

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

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

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

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

26 55. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
3 against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

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

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

60. 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.

61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

62. 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.

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

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

65. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

66. DEFENDANTS’ 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 denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

10 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
12 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

3 73. PLAINTIFF 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 LABOR
11 SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
12 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
13 are entitled to seek and recover statutory costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME COMPENSATION**
15 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
17 **DEFENDANTS)**

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

21 75. PLAINTIFF 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 accurately
24 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
26 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
27 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

28 76. 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.

1 77. 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 workweek
3 unless they receive additional compensation beyond their regular wages in amount specified by
4 law.

5 78. 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 79. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
11 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
12 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
14 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
15 to pay these employees the correct applicable overtime wages for all overtime worked.

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

22 81. In committing these violations of the California Labor Code, DEFENDANTS
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the
27 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

1 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
2 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
3 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
5 bargaining agreement that would preclude the causes of action contained herein this Complaint.
6 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR
7 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
8 provided by the State of California.

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

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

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

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

1 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
2 not prevent these employees from being relieved of all of their duties for the legally required off-
3 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
5 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
6 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
7 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
8 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
9 therefore forfeited meal breaks without additional compensation and in accordance with
10 DEFENDANTS' strict corporate policy and practice.

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

21 **(Cal. Lab. Code §§ 226.7 & 512)**

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **DEFENDANTS)**

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

27 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
28 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
Further, these employees were denied their first rest periods of at least ten (10) minutes for some
shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)

1 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
4 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
5 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
6 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
8 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
9 DEFENDANTS' premises for those rest breaks.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

20 **(Cal. Lab. Code §§ 226 and 226.2)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
22 DEFENDANTS)**

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

26 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
27 "accurate itemized" statement in writing showing:

- 28 a. Gross wages earned;

- 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
- 3 overtime under subdivision (a) of Section 515 or any applicable order of the
- 4 Industrial Welfare Commission;
- 5 c. The number of piece rate units earned and any applicable piece rate if the employee
- 6 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 that by
- 12 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
- 14 on the 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 corresponding
- 17 number of hours worked at each hourly rate by the employee.

18 100. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
19 employees with an “accurate itemized” statement in writing showing:

- 20 a. The total hours of compensable rest and recovery periods, the rate of
- 21 compensation, and the gross wages paid for those periods during the
- 22 pay period; and
- 23 b. The total hours of other nonproductive time, the rate of
- 24 compensation, and the gross wages paid for that time during the pay
- 25 period.

26 101. When DEFENDANTS did not accurately record PLAINTIFF’S and other
27 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also
28 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete

1 and accurate wage statements which failed to show, among other things, the correct overtime rate,
2 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other
3 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
4 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
5 among other things, gross wages earned and all applicable hourly rates in effect during the pay
6 period and the corresponding amount of time worked at each hourly rate. Aside from the
7 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 From time to time DEFENDANTS violated California Labor Code Section 226(a)(2) by failing
10 to provide an accurate amount of total hours worked by PLAINTIFF and other members of the
11 CALIFORNIA CLASS. Specifically, DEFENDANTS included items, including but not limited
12 to “COVID Pay,” “California Sick Pay,” and “Meal Period Penalty Hourly” to the total hours
13 worked. However, the foregoing items are not considered total hours worked for purposes of
14 California Labor Code Section 226(a)(2). Further, DEFENDANTS from time to time failed to
15 issue an itemized wage statement to PLAINTIFF and other members of the CALIFORNIA
16 CLASS that included the total hours worked at the applicable hourly rate. As a result, from time
17 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
18 CLASS with wage statements which violated Cal. Lab. Code § 226.

19 102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct rates for the overtime worked and the amount of employment
23 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
24 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
26 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
27 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
28

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

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

5 **(Cal. Lab. Code §§ 2802)**

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

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

11 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

17 105. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
18 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
21 CLASS members for expenses which included, but were not limited to, costs related to using their
22 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
23 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
24 their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and
25 procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 members for expenses resulting from using their personal cellular phones for DEFENDANTS
27 within the course and scope of their employment for DEFENDANTS. These expenses were
28 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'
conduct to assert any waiver of this expectation. Although these expenses were necessary
expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,

1 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
2 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
3 laws and regulations of California.

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

8 **EIGHTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES WHEN DUE**
10 **(Cal. Lab. Code §§201, 202, 203)**

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

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

16 108. Cal. Lab. Code § 200 provides that:

17 As used in this article:(a) "Wages" includes all amounts for labor performed by
18 employees of every description, whether the amount is fixed or ascertained by the
19 standard of time, task, piece, Commission basis, or other method of calculation. (b)
20 "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

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

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

1 mail if he or she so requests and designates a mailing address. The date of the
2 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

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

5 112. Cal. Lab. Code § 203 provides:

6 If an employer willfully fails to pay, without abatement or reduction, in accordance
7 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
8 discharged or 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.

9 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
10 Members terminated and DEFENDANTS have not tendered payment of wages, to these
11 employees who missed meal and rest breaks, as required by law.

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
20 and severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 24 b. An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 26 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
27 withheld from compensation due to PLAINTIFF and the other members of the
28 CALIFORNIA CLASS; and

1 d. Restitutionary disgorgement of DEFENDANT’S’ ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANTS’ violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

8 b. Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum wages, overtime wages, unreimbursed expenses, and other
10 compensation due to PLAINTIFF and the other members of the CALIFORNIA
11 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
12 CLASS PERIOD plus interest thereon at the statutory rate;

13 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
14 the applicable IWC Wage Order;

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

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

23 3. On all claims:

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

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

26 c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law,
27 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
28 and/or §2802.

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DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
 VULCAN MATERIALS COMPANY
 CIOCT CORPORATION SYSTEM
 818 W. SEVENTH ST., SUITE 930
 LOS ANGELES, CA 90017



9590 9402 5466 9249 9965 75

2. Article Number (Transfer from service label)

7019 1640 0000 6893 8891

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Luis Garcia

- Agent
- Addressee

B. Received by (Printed Name)
Luis Garcia

C. Date of Delivery

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

3.30.21 Guzman

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Mail Restricted Delivery (0)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery