

**SUMMONS  
(CITACION JUDICIAL)**

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

R.M. PARKS PLACE, INC, a California corporation; and DOES 1 through 50, Inclusive

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

PEDRO RODRIGUEZ, an individual, on behalf of himself, and on behalf of all persons similarly situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**FILED**  
SUPERIOR COURT - STOCKTON  
2021 JUL -7 AM 10:46  
BRANDON E. RILEY, Clerk  
BY DANIELLE JEANDEBIEN  
DEPUTY

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

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

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

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

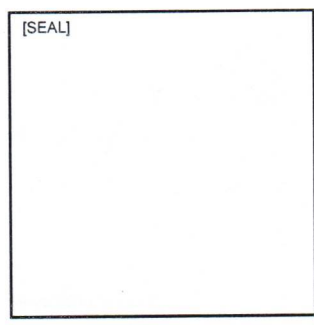
The name and address of the court is:  
(El nombre y dirección de la corte es):  
San Joaquin Civil Division  
180 E Weber Ave Ste 200  
Stockton, CA 95202

CASE NUMBER:  
(Número del Caso):  
STK-CV-UOE-2021-6050

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 3990 Old Town Avenue, Ste C204 San Diego, CA 92110

DATE: 07-07-21 BRANDON E. RILEY Clerk, by DANIELLE JEANDEBIEN, Deputy (Adjunto) (Secretario)

(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: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
  - by personal delivery on (date):

VIA FAX



1 **JCL LAW FIRM, APC**

2 Jean-Claude Lapuyade (State Bar #248676)

3 3990 Old Town Avenue, Suite C204

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8 Attorneys for Plaintiff

9 [Counsel Continued on Next Page]

FILED  
SUPERIOR COURT - STOCKTON

2021 JUL -7 AM 10:46

BRANDON E. RILEY, CLERK

DANIELLE JEANDEBIEN

BY

DEPUTY

#1435/658276

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

12 PEDRO RODRIGUEZ, an individual, on  
13 behalf of himself, and on behalf of all  
14 persons similarly situated,

15 Plaintiffs,

16 vs.

17 R.M. PARKS PLACE, INC, a California  
18 corporation; and DOES 1 through 50,  
19 Inclusive;

20 DEFENDANTS.

Case No: STK-CV-~~UOE~~-2021-6050

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR JURY TRIAL**

VIA FAX

**ZAKAY LAW GROUP, APLC**

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Attorneys for Plaintiff

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

4 **THE PARTIES**

5 1. Defendant R.M. Parks Place, Inc. (“DEFENDANT” and/or “DEFENDANTS”) is a  
6 California corporation that at all relevant times mentioned herein conducted and continues to  
7 conduct substantial business in the state of California.

8 2. DEFENDANT transports gasoline and diesel fuel products throughout California.

9 3. PLAINTIFF was employed by DEFENDANT in California from September of  
10 2020 until October of 2020 and was at all times classified by DEFENDANT as a non-exempt  
11 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and  
12 payment of minimum and overtime wages due for all time worked.

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

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

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
2 relief.

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

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

### 20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
23 meaning the time during which an employee is subject to the control of an employer, including  
24 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF  
25 and CALIFORNIA CLASS Members to work without paying them for all the time they were  
26 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while  
27 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF  
28 was from time to time interrupted by work assignments while clocked out for what

1 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and  
2 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in  
3 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job  
4 requirements. Also, DEFENDANT, as a matter of established company policy and procedure,  
5 administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF  
6 and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the  
7 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members were paid less  
8 than they would have been paid had they been paid for actual recorded time rather than "rounded"  
9 time. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA  
10 CLASS Members for all time worked, is evidenced by DEFENDANT's business records. As a  
11 result, DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
12 proper minimum and overtime wages.

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

17 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
18 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
19 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
20 performance for DEFENDANT. The non-discretionary incentive program provided all  
21 employees paid on an hourly basis with incentive compensation when the employees met the  
22 various performance goals set by DEFENDANT. However, when calculating the regular rate of  
23 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
24 DEFENDANT failed to include the incentive compensation as part of the employees' "regular  
25 rate of pay" for purposes of calculating overtime pay. As a matter of law, the incentive  
26 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be  
27 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of  
28 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of

1 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by  
2 DEFENDANT.

3 11. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA  
4 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,  
5 PLAINTIFF and other non-exempt employees regularly earn non-discretionary remuneration,  
6 including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick  
7 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other  
8 CALIFORNIA CLASS Members at their base rates of pay.

9 12. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA  
10 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,  
11 PLAINTIFF and other non-exempt employees regularly earn non-discretionary remuneration,  
12 including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick  
13 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other  
14 CALIFORNIA CLASS Members at their base rates of pay.

15 13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
16 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks  
17 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA  
18 CLASS Members were required from time to time to perform work as ordered by DEFENDANT  
19 for more than five (5) hours during some shifts without receiving a meal break. Further,  
20 DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS  
21 Members with a second off-duty meal period for some workdays in which these employees were  
22 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other members of  
23 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and  
24 in accordance with DEFENDANT's corporate policy and practice.

25 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
26 CALIFORNIA CLASS Members were also required from time to time to work in excess of four  
27 (4) hours without being provided ten (10) minute rest periods. Further, these employees were  
28 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two

1 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
2 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
3 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
4 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also  
5 not provided with one-hour wages in lieu thereof.

6 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately  
7 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount  
8 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
9 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for  
10 all time worked, meaning the time during which an employee was subject to the control of an  
11 employer, including all the time the employee was permitted or suffered to permit this work.  
12 DEFENDANT required these employees to work off the clock without paying them for all the  
13 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have  
14 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under  
15 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS  
16 Members forfeited time worked by working without their time being accurately recorded and  
17 without compensation at the applicable minimum wage and overtime wage rates. To the extent  
18 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT  
19 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code  
20 §§ 1194, 1197, and 1197.1.

21 16. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
22 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses  
23 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of  
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,  
25 employers are required to indemnify employees for all expenses incurred in the course and scope  
26 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify  
27 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
28 consequence of the discharge of his or her duties, or of his or her obedience to the directions of



1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
2 believed them to be unlawful."

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

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

25 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any  
26 employment are due and payable twice during each calendar month, on days designated in  
27 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly  
28 requires employers to pay employees all wages owed within seven (7) days of the close of the

1 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other  
2 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of  
3 the payroll period, including but not limited to for the “Unpaid Earnings” line items of pay.

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

14 21. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA CLASS  
15 Members, DEFENDANT committed acts of unfair competition in violation of the California  
16 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by engaging in  
17 a company-wide policy and procedure which failed to accurately calculate and record all missed  
18 meal and rest periods by PLAINTIFF and other CALIFORNIA CLASS Members. The proper  
19 recording of these employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a  
20 result of DEFENDANT’s intentional disregard of the obligation to meet this burden,  
21 DEFENDANT failed to properly calculate and/or pay all required compensation for work  
22 performed by the members of the CALIFORNIA CLASS and violated the California Labor Code  
23 and regulations promulgated thereunder as herein alleged.

24 22. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally  
25 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
26 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT  
27 did not have a policy or practice which provided timely off-duty meal and rest breaks to  
28 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The

1 nature of the work performed by the PLAINTIFF did not prevent him from being relieved of all  
2 of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure  
3 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's  
4 business records. As a result of DEFENDANT not accurately recording all missed meal and rest  
5 periods and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by  
6 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,  
7 DEFENDANTS has not fully paid PLAINTIFF the overtime compensation still owed to her or  
8 any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for  
9 PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 10 **JURISDICTION AND VENUE**

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

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

#### 20 **THE CALIFORNIA CLASS**

21 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
24 individuals who are or previously were employed by DEFENDANT in California and classified  
25 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period  
26 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined  
27 by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the  
28

1 aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
2 (\$5,000,000.00).

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

5 27. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
6 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,  
7 intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to  
8 record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS  
9 Members, even though DEFENDANT enjoyed the benefit of this work, required employees to  
10 perform this work and permits or suffers to permit this work.

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

20 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
21 CLASS Members is impracticable.

22 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
23 law by:

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

3 b) Committing an act of unfair competition in violation of the UCL, by failing to  
4 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS  
5 with the legally required meal and rest periods; and,

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

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

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

16 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
17 are raised in this Complaint are common to the CALIFORNIA CLASS will  
18 apply to every member of the CALIFORNIA CLASS;

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



1 DEFENDANT; and,

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

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

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

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

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

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

28 1) With respect to the First Cause of Action, the final relief on behalf

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of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT’s policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

1) The interests of the members of the CALIFORNIA CLASS in 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 CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to

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

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

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

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

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

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

25 c) The members of the CALIFORNIA CLASS are so numerous that it is  
26 impractical to bring all members of the CALIFORNIA CLASS before the  
27 Court;

28 d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able

1 to obtain effective and economic legal redress unless the action is maintained  
2 as a Class Action;

3 e) There is a community of interest in obtaining appropriate legal and equitable  
4 relief for the acts of unfair competition, statutory violations and other  
5 improprieties, and in obtaining adequate compensation for the damages and  
6 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
7 CLASS;

8 f) There is a community of interest in ensuring that the combined assets of  
9 DEFENDANT are sufficient to adequately compensate the members of the  
10 CALIFORNIA CLASS for the injuries sustained;

11 g) DEFENDANT has acted or refused to act on grounds generally applicable to  
12 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
13 with respect to the CALIFORNIA CLASS as a whole;

14 h) The members of the CALIFORNIA CLASS are readily ascertainable from the  
15 business records of DEFENDANT; and,

16 i) Class treatment provides manageable judicial treatment calculated to bring a  
17 efficient and rapid conclusion to all litigation of all wage and hour related claims  
18 arising out of the conduct of DEFENDANT as to the members of the  
19 CALIFORNIA CLASS.

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and  
27 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the  
28 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California

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

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

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

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

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

- 26 a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
27 compensation due to members of the CALIFORNIA LABOR SUBCLASS for  
28 missed meal and rest breaks in violation of the California Labor Code and



1 California regulations and the applicable California Wage Order;

2 b) Whether DEFENDANT failed to provide the PLAINTIFF and the other  
3 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized  
4 wage statements;

5 c) Whether DEFENDANT has engaged in unfair competition by the above-listed  
6 conduct;

7 d) The proper measure of damages and penalties owed to the members of the  
8 CALIFORNIA LABOR SUB-CLASS; and,

9 e) Whether DEFENDANT's conduct was willful.

10 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under  
11 California law by;

12 a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the  
13 PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS all  
14 wages due for overtime worked, for which DEFENDANT is liable pursuant to  
15 Cal. Lab. Code § 1194;

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

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

24 d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
25 and the other members of the CALIFORNIA LABOR SUB-CLASS with all  
26 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the  
27 legally required off-duty rest breaks; and,

28 e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members with necessary expenses  
2 incurred in the discharge of their job duties; and,

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

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

- 11 a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
12 numerous that the joinder of all CALIFORNIA LABOR SUBCLASS Members  
13 is impracticable and the disposition of their claims as a class will benefit the  
14 parties and the Court;
- 15 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
16 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
17 CLASS and will apply to every member of the CALIFORNIA LABOR SUB-  
18 CLASS;
- 19 c) The claims of the representative PLAINTIFF are typical of the claims of each  
20 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
21 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
22 employee paid on an hourly basis who was subjected to the DEFENDANT's  
23 practice and policy which failed to pay the correct amount of wages due to the  
24 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury  
25 as a result of DEFENDANT's employment practices. PLAINTIFF and the  
26 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly  
27 or identically harmed by the same unlawful, deceptive, and unfair misconduct  
28 engaged in by DEFENDANT; and,

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

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

12 a) Without class certification and determination of declaratory, injunctive,  
13 statutory and other legal questions within the class format, prosecution of  
14 separate actions by individual members of the CALIFORNIA LABOR SUB-  
15 CLASS will create the risk of:

16 1) Inconsistent or varying adjudications with respect to individual  
17 members of the CALIFORNIA LABOR SUB-CLASS which would  
18 establish incompatible standards of conduct for the parties opposing the  
19 CALIFORNIA LABOR SUB-CLASS; or,

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

25 b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
27 SUB-CLASS, making appropriate class-wide relief with respect to the  
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to

1 pay all wages due. Including the correct wages for all time worked by the  
2 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

18 A. Inconsistent or varying adjudications with respect to individual  
19 members of the CALIFORNIA LABOR SUBCLASS, which  
20 would establish incompatible standards of conduct for the  
21 DEFENDANT; and/or,

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

27 3) In the context of wage litigation because a substantial number of  
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid

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

4) 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.

43. 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;
- 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





1 § 17021.

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

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

15 Cal. Bus. & Prof. Code § 17203.

16 47. By the conduct alleged herein, DEFENDANT has engaged and continues to engage  
17 in a business practice which violates California law, including but not limited to, the applicable  
18 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code  
19 including Sections 204, 210, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for  
20 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.  
21 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
22 competition, including restitution of wages wrongfully withheld.

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

28 49. By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated meal  
and rest periods, the required amount of compensation for missed meal and rest periods and  
overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse al

1 necessary business expenses incurred, due to a business practice that cannot be justified, pursuant  
2 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation  
3 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
4 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
5 withheld.

6 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
7 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
8 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
9 DEFENDANT.

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

14 52. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
15 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal  
16 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
17 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
18 hours of work.

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

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

28 55. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
2 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and  
3 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business  
4 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

10 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
11 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
12 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
13 engaging in any unlawful and unfair business practices in the future.

14 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
15 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
16 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
17 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
18 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
19 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
20 unlawful and unfair business practices.

21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

25 **and Against All Defendants)**

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

1           60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS  
2 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor Code  
3 and the Industrial Welfare Commission requirements for DEFENDANT’s failure to accurately  
4 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

12          64. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other  
13 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of  
14 time they work. As set forth herein, DEFENDANT’s policy and practice was to unlawfully and  
15 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS.

17          65. DEFENDANT’s unlawful wage and hour practices manifested, without limitation,  
18 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a  
19 policy and practice that denies accurate compensation to PLAINTIFF and the other members of  
20 the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay..

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

27          67. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive

1 the correct minimum wage compensation for their time worked for DEFENDANT.

2 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
3 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members  
4 to work without paying them for all the time they were under DEFENDANT's control. During  
5 the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the  
6 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,  
7 constituting a failure to pay all earned wages.

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

13 70. DEFENDANT knew or should have known that PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time  
15 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to  
16 not pay employees for their labor as a matter of company policy, practice and procedure, and  
17 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of  
18 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

27 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS  
28 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as

1 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by  
2 the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged  
3 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other  
4 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

10 73. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS  
11 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of  
12 this Complaint.

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

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

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

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

28 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and

1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by  
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,  
3 including overtime work.

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

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

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

20 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
21 the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF  
22 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and  
23 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid  
24 collective bargaining agreement that would preclude the causes of action contained herein this  
25 Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA  
26 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waivable  
27 rights provided by the State of California.

28 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the



1 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime  
2 worked that they are entitled to, constituting a failure to pay all earned wages.

3 84. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of  
4 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
5 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
6 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
8 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by  
9 employees.

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

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

22 87. In performing the acts and practices herein alleged in violation of California labor  
23 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUBCLASS for  
24 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT  
25 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
26 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter  
27 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
28 depriving them of their property and legal rights, and otherwise causing them injury in order to

1 increase company profits at the expense of these employees.

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

21 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS  
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
23 this Complaint.

24 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
25 time to time required to work in excess of four (4) hours without being provided ten (10) minute  
26 rest periods. Further, these employees from time to time were denied their first rest periods of at  
27 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second  
28 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)

1 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked  
2 of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-  
3 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their  
4 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
5 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's  
6 managers.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 2802]**

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

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

23 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

24  
25 An employer shall indemnify his or her employee for all necessary  
26 expenditures or losses incurred by the employee in direct consequence of the  
27 discharge of his or her duties, or of his or her obedience to the directions of  
28 the employer, even though unlawful, unless the employee, at the time of  
obeying the directions, believed them to be unlawful.



1           102. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
2 “accurate itemized” statement in writing showing:

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

21           103. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other  
22 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage  
23 statements which failed to show, among other things, the correct gross and net wages earned. Cal.  
24 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an  
25 accurate itemized wage statement in writing showing, among other things, gross wages earned  
26 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
27 time worked at each hourly rate. Additionally, DEFENDANT violated Cal. Lab. Code Section  
28 226(a)(8) as DEFENDANT failed to list the correct name of the legal entity that employed

1 PLAINTIFF and other CALIFORNIA CLASS Members. Aside, from the violations listed above  
2 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
3 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from  
4 time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
5 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

17 **EIGHTH CAUSE OF ACTION**

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

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

20 **(By PLAINTIFF and the CALIFORNIA CLASS LABOR SUB-CLASS and Against All**  
21 **DEFENDANTS)**

22 105. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS  
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs  
24 of this Complaint.

25 106. Cal. Lab. Code § 200 states that:

26 As used in this article:

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

28 (b) "Labor" includes labor, work, or service whether rendered or  
performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the person  
2 demanding payment.

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

6 108. Cal. Lab. Code § 202 states, in relevant part, that:

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

17 109. There was no definite term in PLAINTIFF’s or any other CALIFORNIA  
18 LABOR SUB-CLASS Members’ employment contract.

19 110. Cal. Lab. Code § 203 states:

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

26 111. When PLAINTIFF left employment with DEFENDANTS, DEFENDANTS still  
27 owed PLAINTIFF wages for work performed because PLAINTIFF was not compensated  
28 correctly for her overtime worked and meal and rest breaks missed. To date, DEFENDANTS has  
not paid PLAINTIFF these wages still owed to her. As such, DEFENDANTS has not fully paid



1 PLAINTIFF all wages still owed to her or any penalty wages that are now owed to her under  
2 California Labor Code § 203.

3 112. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-  
4 CLASS Members has terminated, yet as to those individuals whose employment terminated,  
5 DEFENDANTS did not timely tender payment of all wages owed as required by law.

6 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
7 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,  
8 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of  
9 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated  
10 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and  
11 statutory costs as allowed.

12 **NINTH CAUSE OF ACTION**

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

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

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

16 114. PLAINTIFF reallege and incorporates by this reference, as though fully set forth  
17 herein, the prior paragraphs of this Complaint.

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

27 116. PLAINTIFF, and such persons that may be added from time to time who satisfy  
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to  
2 themselves and all individuals who are or previously were employed by Defendant in California  
3 during the time period of April 21, 2020 until the present (the "AGGRIEVED EMPLOYEES").

4 117. On April 21, 2021, PLAINTIFF gave written notice by certified mail to the Labor  
5 and Workforce Development Agency (the "Agency") and the employer of the specific  
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
8 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
9 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
10 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
11 EMPLOYEES as herein defined.

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

25  
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly  
3 and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

7 B) An order temporarily, preliminarily and permanently enjoining and restraining  
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

9 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully  
10 withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS; and,

12 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund  
13 for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the  
14 other members of the CALIFORNIA CLASS.

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

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

19 B) Compensatory damages, according to proof at trial, including compensatory damages  
20 for minimum and overtime compensation due PLAINTIFF and the other during the  
21 applicable CLASS PERIOD plus interest thereon at the statutory rate;

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

27 D) Meal and rest period compensation pursuant to California Labor Code Section 226.7,  
28 512 and the applicable IWC Wage Order;

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- E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
  - F) The wages of all terminated individuals in 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; and,
  - G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.
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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, § 1197, §2699 *et seq.*, and/or §2802.

Dated: June 29, 2021

Respectfully Submitted,  
ZAKAY LAW GROUP

By:   
Shani Zakay  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

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

Dated: June 29, 2021

Respectfully Submitted,  
ZAKAY LAW GROUP.

By: 

Shani Zakay  
Attorneys for PLAINTIFF

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# **EXHIBIT 1**



3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Tel: 619-599-8292  
Fax: 619-599-8291  
Toll Free: 1-888-498-6999  
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Jean-Claude Lapuyade, Esq.  
jlapuyade@jcl-lawfirm.com

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April 21, 2021

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

**R.M. PARKS PLACE, INC.**  
c/o TIM CALLISON  
1061 N. MAIN ST.  
PORTERVILLE CA 93258  
***Via Certified Mail with Return Receipt***  
**No. 7021 0350 0001 8165 1637**

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 PEDRO RODRIGUEZ (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against R.M. PARKS PLACE, INC (“Defendant”). 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 Defendant in California from September of 2020 to October of 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant 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 Defendant 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 Defendant 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 Defendant. 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 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)



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10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

13  
14  
15 PEDRO RODRIGUEZ, an individual, on behalf of himself  
and on behalf of all persons similarly situated,

16  
17 Plaintiff,

18 vs.

19 R.M. PARKS PLACE, INC., a California Corporation; and  
DOES 1 through 50, inclusive,

20  
21 Defendants.

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

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**

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

5 **THE PARTIES**

6 1. Defendant R.M. Parks Place, Inc. (“DEFENDANT”) is a California Corporation  
7 that at all relevant times mentioned herein conducted and continues to conduct substantial  
8 business in the state of California.

9 2. DEFENDANT transports gasoline and diesel fuel products throughout California.

10 3. PLAINTIFF was employed by DEFENDANT in California from September of  
11 2020 until October of 2020 and was at all times classified by DEFENDANT as a non-exempt  
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and  
13 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

### 21 THE CONDUCT

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

1 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what  
2 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and  
3 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in  
4 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job  
5 requirements. Also, DEFENDANT, as a matter of established company policy and procedure,  
6 administered a uniform practice of rounding the actual time worked and recorded by  
7 PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so  
8 that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members  
9 were paid less than they would have been paid had they been paid for actual recorded time  
10 rather than "rounded" time. DEFENDANT's policy and practice not to pay PLAINTIFF and  
11 other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's  
12 business records. As a result, DEFENDANT failed to pay PLAINTIFF and other  
13 CALIFORNIA CLASS Members the proper minimum and overtime wages.

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

18 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
19 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
20 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
21 performance for DEFENDANT. The non-discretionary incentive program provided all  
22 employees paid on an hourly basis with incentive compensation when the employees met the  
23 various performance goals set by DEFENDANT. However, when calculating the regular rate  
24 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
25 DEFENDANT failed to include the incentive compensation as part of the employees' "regular  
26 rate of pay" for purposes of calculating overtime pay. As a matter of law, the incentive  
27 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be  
28 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of

1 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by  
2 DEFENDANT.

3 11. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA  
4 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,  
5 PLAINTIFF and other non-exempt employees regularly earn non-discretionary remuneration,  
6 including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick  
7 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other  
8 CALIFORNIA CLASS Members at their base rates of pay.

9 12. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA  
10 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,  
11 PLAINTIFF and other non-exempt employees regularly earn non-discretionary remuneration,  
12 including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick  
13 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other  
14 CALIFORNIA CLASS Members at their base rates of pay.

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

26 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were also required from time to time to work in excess of four  
28 (4) hours without being provided ten (10) minute rest periods. Further, these employees were

1 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two  
2 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
3 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
4 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
5 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also  
6 not provided with one hour wages in lieu thereof.

7 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately  
8 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount  
9 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
10 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for  
11 all time worked, meaning the time during which an employee was subject to the control of an  
12 employer, including all the time the employee was permitted or suffered to permit this work.  
13 DEFENDANT required these employees to work off the clock without paying them for all the  
14 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have  
15 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under  
16 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS  
17 Members forfeited time worked by working without their time being accurately recorded and  
18 without compensation at the applicable minimum wage and overtime wage rates. To the extent  
19 that the time worked off the clock did not qualify for overtime premium payment,  
20 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of  
21 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

22 16. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
23 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses  
24 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence  
25 of discharging their duties on behalf of DEFENDANT. Under California Labor Code  
26 Section 2802, employers are required to indemnify employees for all expenses incurred in  
27 the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an  
28 employer shall indemnify his or her employee for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or of  
2 his or her obedience to the directions of the employer, even though unlawful, unless the  
3 employee, at the time of obeying the directions, believed them to be unlawful."

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

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

26 19. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any  
27 employment are due and payable twice during each calendar month, on days designated in  
28 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly

1 requires employers to pay employees all wages owed within seven (7) days of the close of  
2 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other  
3 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close  
4 of the payroll period, including but not limited to for the “Unpaid Earnings” line items of  
5 pay.

6         20. In violation of the applicable sections of the California Labor Code and the  
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT  
8 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of  
10 DEFENDANT is intended to purposefully avoid the payment for all time worked as required  
11 by California law which allows DEFENDANT to illegally profit and gain an unfair  
12 advantage over competitors who complied with the law. To the extent equitable tolling  
13 operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the  
14 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

15         21. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA  
16 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the  
17 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”),  
18 by engaging in a company-wide policy and procedure which failed to accurately calculate  
19 and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA  
20 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is  
21 the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the  
22 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all  
23 required compensation for work performed by the members of the CALIFORNIA CLASS  
24 and violated the California Labor Code and regulations promulgated thereunder as herein  
25 alleged.

26         22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
28 Labor Code and failed to pay him all minimum and overtime wages due to him.



1 DEFENDANT did not have a policy or practice which provided timely off-duty meal and  
2 rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal  
3 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him  
4 from being relieved of all of his duties for the legally required off-duty meal periods. As a  
5 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal  
6 periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT not  
7 accurately recording all missed meal and rest periods and/or minimum and overtime wages  
8 due, the wage statements issued to PLAINTIFF by DEFENDANT violated California law,  
9 and in particular, Labor Code Section 226(a). To date, DEFENDANTS has not fully paid  
10 PLAINTIFF the overtime compensation still owed to her or any penalty wages owed to her  
11 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does  
12 not exceed the sum or value of \$75,000.

#### 13 14 **JURISDICTION AND VENUE**

15 23. This Court has jurisdiction over this Action pursuant to California Code of  
16 Civil Procedure, Section 410.10 and California Business & Professions Code, Section  
17 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly  
18 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

#### 25 26 27 **THE CALIFORNIA CLASS**

28 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and

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

9       26. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
11 accordingly.

12       27. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
13 Commission ("IWC") Wage Order requirements, and the applicable provisions of California  
14 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT  
15 failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA  
16 CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required  
17 employees to perform this work and permits or suffers to permit this work.

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

27       29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
28 CLASS Members is impracticable.

1           30.    DEFENDANT violated the rights of the CALIFORNIA CLASS under  
2 California law by:

- 3           (a)    Committing an act of unfair competition in violation of , Cal. Bus. &  
4           Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly  
5           and/or deceptively having in place company policies, practices and  
6           procedures that failed to record and pay PLAINTIFF and the other  
7           members of the CALIFORNIA CLASS for all time worked, including  
8           minimum wages owed and overtime wages owed for work performed  
9           by these employees;
- 10          (b)    Committing an act of unfair competition in violation of the UCL, by  
11          failing to provide the PLAINTIFF and the other members of the  
12          CALIFORNIA CLASS with the legally required meal and rest periods;  
13          and,
- 14          (c)    Committing an act of unfair competition in violation of the California  
15          Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by  
16          violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF  
17          and the CALIFORNIA CLASS members with necessary expenses  
18          incurred in the discharge of their job duties.

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

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

1 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all  
2 the other members of the CALIFORNIA CLASS, was classified as a  
3 non-exempt employee paid on an hourly basis who was subjected to the  
4 DEFENDANT's deceptive practice and policy which failed to provide  
5 the legally required meal and rest periods to the CALIFORNIA CLASS  
6 and thereby underpaid compensation to PLAINTIFF and  
7 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a  
8 result of DEFENDANT's employment practices. PLAINTIFF and the  
9 members of the CALIFORNIA CLASS were and are similarly or  
10 identically harmed by the same unlawful, deceptive, and unfair  
11 misconduct engaged in by DEFENDANT; and,

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

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

22 (a) Without class certification and determination of declaratory, injunctive,  
23 statutory and other legal questions within the class format, prosecution  
24 of separate actions by individual members of the CALIFORNIA  
25 CLASS will create the risk of:

26 1) Inconsistent or varying adjudications with respect to individual  
27 members of the CALIFORNIA CLASS which would establish  
28 incompatible standards of conduct for the parties opposing the

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CALIFORNIA CLASS; and/or,

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

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will

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be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

4) 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. §

1 382.

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

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

1 applicable to the CALIFORNIA CLASS, thereby making final class-  
2 wide relief appropriate with respect to the CALIFORNIA CLASS as a  
3 whole;

4 (h) The members of the CALIFORNIA CLASS are readily ascertainable  
5 from the business records of DEFENDANT; and,

6 (i) Class treatment provides manageable judicial treatment calculated to  
7 bring a efficient and rapid conclusion to all litigation of all wage and  
8 hour related claims arising out of the conduct of DEFENDANT as to  
9 the members of the CALIFORNIA CLASS.

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

15

16 **THE CALIFORNIA LABOR SUB-CLASS**

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

26 36. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
27 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California  
28 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT



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

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

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

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

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

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

3 (e) Whether DEFENDANT's conduct was willful.

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

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

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

14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and  
15 the members of the CALIFORNIA LABOR SUB-CLASS with an  
16 accurate itemized statement in writing showing the corresponding  
17 correct amount of wages earned by the employee;

18 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
19 PLAINTIFF and the other members of the CALIFORNIA LABOR  
20 SUB-CLASS with all legally required off-duty, uninterrupted thirty  
21 (30) minute meal breaks and the legally required off-duty rest breaks;  
22 and,

23 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF  
24 and the CALIFORNIA LABOR SUB-CLASS members with necessary  
25 expenses incurred in the discharge of their job duties; and,

26 (g) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
27 when an employee is discharged or quits from employment, the  
28 employer must pay the employee all wages due without abatement, by

1 failing to tender full payment and/or restitution of wages owed or in the  
2 manner required by California law to the members of the  
3 CALIFORNIA LABOR SUB-CLASS who have terminated their  
4 employment.

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

- 7 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS  
8 are so numerous that the joinder of all CALIFORNIA LABOR SUB-  
9 CLASS Members is impracticable and the disposition of their claims as  
10 a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief  
12 issues that are raised in this Complaint are common to the  
13 CALIFORNIA LABOR SUB-CLASS and will apply to every member  
14 of the CALIFORNIA LABOR SUB-CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims  
16 of each member of the CALIFORNIA LABOR SUB-CLASS.  
17 PLAINTIFF, like all the other members of the CALIFORNIA LABOR  
18 SUB-CLASS, was a non-exempt employee paid on an hourly basis who  
19 was subjected to the DEFENDANT's practice and policy which failed  
20 to pay the correct amount of wages due to the CALIFORNIA LABOR  
21 SUB-CLASS. PLAINTIFF sustained economic injury as a result of  
22 DEFENDANT's employment practices. PLAINTIFF and the members  
23 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
24 identically harmed by the same unlawful, deceptive, and unfair  
25 misconduct engaged in by DEFENDANT; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and  
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and  
28 has retained counsel who are competent and experienced in Class

1 Action litigation. There are no material conflicts between the claims of  
2 the representative PLAINTIFF and the members of the CALIFORNIA  
3 LABOR SUB-CLASS that would make class certification  
4 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-  
6 CLASS Members.

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

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

- 13 1) Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS which  
15 would establish incompatible standards of conduct for the  
16 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 17 2) Adjudication with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS which would as a  
19 practical matter be dispositive of interests of the other members  
20 not party to the adjudication or substantially impair or impede  
21 their ability to protect their interests.

22 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have  
23 acted or refused to act on grounds generally applicable to the  
24 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide  
25 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a  
26 whole in that DEFENDANT fails to pay all wages due. Including the  
27 correct wages for all time worked by the members of the  
28 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

16 2) Class certification will obviate the need for unduly duplicative  
17 litigation that would create the risk of:  
18 A. Inconsistent or varying adjudications with respect to  
19 individual members of the CALIFORNIA LABOR SUB-  
20 CLASS, which would establish incompatible standards of  
21 conduct for the DEFENDANT; and/or,  
22 B. Adjudications with respect to individual members of the  
23 CALIFORNIA LABOR SUB-CLASS would as a  
24 practical matter be dispositive of the interests of the other  
25 members not parties to the adjudication or substantially  
26 impair or impede their ability to protect their interests;

27 3) In the context of wage litigation because a substantial number of  
28 individual CALIFORNIA LABOR SUB-CLASS Members will

1 avoid asserting their legal rights out of fear of retaliation by  
2 DEFENDANT, which may adversely affect an individual's job  
3 with DEFENDANT or with a subsequent employer, the Class  
4 Action is the only means to assert their claims through a  
5 representative; and,

- 6 4) A class action is superior to other available methods for the fair  
7 and efficient adjudication of this litigation because class  
8 treatment will obviate the need for unduly and unnecessary  
9 duplicative litigation that is likely to result in the absence of  
10 certification of this action pursuant to Cal. Code of Civ. Proc. §  
11 382.

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

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR  
15 SUB-CLASS predominate over any question affecting only individual  
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair  
18 and efficient adjudication of the claims of the members of the  
19 CALIFORNIA LABOR SUB-CLASS because in the context of  
20 employment litigation a substantial number of individual  
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
22 their rights individually out of fear of retaliation or adverse impact on  
23 their employment;
- 24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so  
25 numerous that it is impractical to bring all members of the  
26 CALIFORNIA LABOR SUB-CLASS before the Court;
- 27 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS  
28 Members, will not be able to obtain effective and economic legal

1 redress unless the action is maintained as a Class Action;

- 2 (e) There is a community of interest in obtaining appropriate legal and  
3 equitable relief for the acts of unfair competition, statutory violations  
4 and other improprieties, and in obtaining adequate compensation for  
5 the damages and injuries which DEFENDANT's actions have inflicted  
6 upon the CALIFORNIA LABOR SUB-CLASS;
- 7 (f) There is a community of interest in ensuring that the combined assets of  
8 DEFENDANT are sufficient to adequately compensate the members of  
9 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 10 (g) DEFENDANT has acted or refused to act on grounds generally  
11 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby  
12 making final class-wide relief appropriate with respect to the  
13 CALIFORNIA LABOR SUB-CLASS as a whole;
- 14 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
15 ascertainable from the business records of DEFENDANT. The  
16 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
17 CLASS Members who worked for DEFENDANT in California at any  
18 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 19 (i) Class treatment provides manageable judicial treatment calculated to  
20 bring a efficient and rapid conclusion to all litigation of all wage and  
21 hour related claims arising out of the conduct of DEFENDANT as to  
22 the members of the CALIFORNIA LABOR SUB-CLASS.

23  
24 **FIRST CAUSE OF ACTION**

25 **For Unlawful Business Practices**

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

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

28 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege

1 and  
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
3 Complaint.

4 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.  
5 Code § 17021.

6 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)  
7 defines  
8 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
9 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
10 competition as follows:

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

19 Cal. Bus. & Prof. Code § 17203.

20 47. By the conduct alleged herein, DEFENDANT has engaged and continues to  
21 engage in a business practice which violates California law, including but not limited to, the  
22 applicable Industrial Wage Order(s), the California Code of Regulations and the California  
23 Labor Code including Sections 204, 210, 226.7, 233, 246, 510, 512, 1194, 1197, 1197.1,  
24 1198 & 2802, for which this Court should issue declaratory and other equitable relief  
25 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the  
26 conduct held to constitute unfair competition, including restitution of wages wrongfully  
27 withheld.

28 48. By the conduct alleged herein, DEFENDANT’s practices were unlawful and  
unfair in that these practices violate 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



1 17203 of the California Business & Professions Code, including restitution of wages  
2 wrongfully withheld.

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

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

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

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

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

28 54. By and through the unlawful and unfair business practices described herein,

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

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

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

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

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

28



1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum  
3 wage pay.

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

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

14 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT  
15 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS  
16 Members to work without paying them for all the time they were under DEFENDANT's  
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked  
19 that they were entitled to, constituting a failure to pay all earned wages.

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

26 70. DEFENDANT knew or should have known that PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their  
28 time worked. DEFENDANT elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of company policy, practice  
2 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF  
3 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum  
4 wages for their time worked.

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

13  
14 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
15 CLASS therefore request recovery of all unpaid wages, according to proof, interest,  
16 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,  
17 in a sum as provided by the California Labor Code and/or other applicable statutes.  
18 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith.  
19 Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled  
20 to seek and recover statutory costs.

21  
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

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

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

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

1 paragraphs of this Complaint.

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

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

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

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

19 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
20 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by  
21 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,  
22 including overtime work.

23 79. DEFENDANT's unlawful wage and hour practices manifested, without  
24 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of  
25 implementing a policy and practice that failed to accurately record overtime worked by  
26 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate  
27 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)

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

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

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

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

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

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

1 DEFENDANT's business records and witnessed by employees.

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

8 86. DEFENDANT knew or should have known that PLAINTIFF and the other  
9 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all  
10 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross  
11 nonfeasance, to not pay employees for their labor as a matter of company policy, practice  
12 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF  
13 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

23 88. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS therefore request recovery of all unpaid wages, including overtime wages,  
25 according to proof, interest, statutory costs, as well as the assessment of any statutory  
26 penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or  
27 other applicable statutes. To the extent overtime compensation is determined to be owed to  
28 the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,



1 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these  
2 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
3 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS  
4 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in  
5 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
6 are entitled to seek and recover statutory costs.

7  
8 **FOURTH CAUSE OF ACTION**

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

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

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

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

16 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
17 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
18 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order  
19 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA  
20 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of  
21 all of their duties for the legally required off-duty meal periods. As a result of their rigorous  
22 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
23 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.  
24 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA  
25 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)  
26 hour of work is evidenced by DEFENDANT's business records from time to time. Further,  
27 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
28 second off-duty meal period in some workdays in which these employees were required by

1 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF  
2 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal  
3 breaks without additional compensation and in accordance with DEFENDANT's corporate  
4 policy and practice.

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

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

14  
15 **FIFTH CAUSE OF ACTION**

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

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

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

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

23 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
24 from time to time required to work in excess of four (4) hours without being provided ten  
25 (10) minute rest periods. Further, these employees from time to time were denied their first  
26 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
27 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of  
28 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten

1 (10) minutes for some shifts worked of ten (10) hours or more from time to time.  
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not  
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically  
5 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Lab. Code § 2802]**

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

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

23 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

27 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,  
28

1 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
2 CLASS members for required expenses incurred in the discharge of their job duties for  
3 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the  
4 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not  
5 limited to, costs related to using their personal cellular phones all on behalf of and for the  
6 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS  
7 Members were required by DEFENDANT to use their personal cell phones to respond to  
8 work related issues. DEFENDANT's policy, practice and procedure was to not reimburse  
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting  
10 from using their personal cellular phones for DEFENDANT within the course and scope of  
11 their employment for DEFENDANT. These expenses were necessary to complete their  
12 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any  
13 waiver of this expectation. Although these expenses were necessary expenses incurred by  
14 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed  
15 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
16 members for these expenses as an employer is required to do under the laws and regulations  
17 of California.

18 100. PLAINTIFF therefore demands reimbursement for expenditures or losses  
19 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
20 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,  
21 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

22 **SEVENTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 226]**

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

27 101. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
28

1 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
2 paragraphs of this Complaint.

3 102. Cal. Labor Code § 226 provides that an employer must furnish employees with  
4 an “accurate itemized” statement in writing showing:

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

23 103. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
24 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate  
25 wage statements which failed to show, among other things, the correct gross and net wages  
26 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her  
27 employees with an accurate itemized wage statement in writing showing, among other  
28 things, gross wages earned and all applicable hourly rates in effect during the pay period and  
the corresponding amount of time worked at each hourly rate. Additionally, DEFENDANT  
violated Cal. Lab. Code Section 226(a)(8) as DEFENDANT failed to list the correct name  
of the legal entity that employed PLAINTIFF and other CALIFORNIA CLASS Members.  
Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to  
PLAINTIFF an itemized wage statement that lists all the requirements under California  
Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF  
and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements  
which violated Cal. Lab. Code § 226.



1 an employee, the wages earned and unpaid at the time of discharge are due and payable  
2 immediately.”

3 108. Cal. Lab. Code § 202 states, in relevant part, that:

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

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

16 110. Cal. Lab. Code § 203 states:

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

23 111. When PLAINTIFF left employment with DEFENDANTS,  
24 DEFENDANTS still owed PLAINTIFF wages for work performed because  
25 PLAINTIFF was not compensated correctly for her overtime worked and meal and rest  
26 breaks missed. To date, DEFENDANTS has not paid PLAINTIFF these wages still  
27 owed to her. As such, DEFENDANTS has not fully paid PLAINTIFF all wages still  
28 owed to her or any penalty wages that are now owed to her under California Labor Code  
§ 203.

112. The employment of PLAINTIFF and many other CALIFORNIA LABOR  
SUB-CLASS Members has terminated, yet as to those individuals whose employment  
terminated, DEFENDANTS did not timely tender payment of all wages owed as required by  
law.

113. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,

1 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of  
2 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated  
3 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and  
4 statutory costs as allowed.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

- 21 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
22 Causes Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
23 action pursuant to Cal. Code of Civ. Proc. § 382;  
24 B) Compensatory damages, according to proof at trial, including compensatory  
25 damages for minimum and overtime compensation due PLAINTIFF and the other  
26 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
27 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
28 statutory rate;



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- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
- F) The wages of all terminated individuals in 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; and,
- F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

Dated: \_\_\_\_\_, 2021      ZAKAY LAW GROUP

By: \_\_\_\_\_  
Shani Zakay  
Attorneys for Plaintiff

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**DEMAND FOR A JURY TRIAL**

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

Dated: \_\_\_\_\_, 2021      ZAKAY LAW GROUP

By: \_\_\_\_\_  
Shani Zakay  
Attorneys for Plaintiff