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County of Los Angeles

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

20 ROBERT TRESSLER, an individual, on  
21 behalf of herself and on behalf of all persons  
22 similarly situated,

23 Plaintiff,

24 v.

25 SPOONFUL MANAGEMENT, LLC., a  
26 California Limited Liability Company; and  
27 DOES 1-50, Inclusive,

28 Defendants.

Case No.

**BC 719405**

**BY FAX**

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**

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

5 **THE PARTIES**

6 1. Defendant Spoonful Management, LLC. (“DEFENDANT”) is a limited liability  
7 company that at all relevant times mentioned herein conducted and continues to conduct  
8 substantial and regular business in the state of California.

9 2. PLAINTIFF was employed by DEFENDANT in California from February 2016  
10 to September 17, 2017 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 3. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
14 defined as all persons who are or previously were employed by DEFENDANT in California and  
15 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 the CALIFORNIA CLASS Members is under five million dollars  
19 (\$5,000,000.00).

20 4. 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 uniform policy and practice  
23 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and  
24 practice alleged herein was an unlawful, unfair and deceptive business practice whereby  
25 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members  
26 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the  
28 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been  
economically injured by DEFENDANT’s past and current unlawful conduct, and all other  
appropriate legal and equitable relief.

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

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

### **THE CONDUCT**

18           7.     Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
19 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time  
20 worked, meaning the time during which an employee is subject to the control of an employer,  
21 including all the time the employee is suffered or permitted to work. DEFENDANT required  
22 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time  
23 they were under DEFENDANT's control. Importantly, PLAINTIFF was not provided with  
24 minimum wages for all of his non-production work time when DEFENDANT assigned  
25 PLAINTIFF and other CALIFORNIA CLASS Members to work on catered parties as  
26 DEFENDANT only paid PLAINTIFF and other CALIFORNIA CLASS Members a flat rate for  
27 working these parties regardless of how many hours were worked. PLAINTIFF also did not  
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1 receive paid rest breaks as required by California law when being paid a piece rate by  
2 DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members  
3 forfeited minimum wage and overtime compensation by regularly working without their time  
4 being accurately recorded and without compensation at the applicable minimum wage and  
5 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other  
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business  
7 records.

8         8. As a result of their rigorous work schedules, PLAINTIFF and other  
9 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks  
10 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA  
11 CLASS Members were required to perform work as ordered by DEFENDANT for more than  
12 five (5) hours during some shifts without receiving an off-duty meal break as evidenced by  
13 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA  
14 CLASS therefore forfeited meal breaks without additional compensation and in accordance with  
15 DEFENDANT's strict corporate policy and practice.

16         9. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
17 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without  
18 being provided ten (10) minute rest periods. Further, these employees were denied their first rest  
19 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours  
20 from time to time, a first and second rest period of at least ten (10) minutes for some shifts  
21 worked of between six (6) and eight (8) hours from time to time, and a first, second and third  
22 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
23 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided  
24 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF  
25 and other CALIFORNIA CLASS Members were from time to time denied their proper rest  
26 periods by DEFENDANT and DEFENDANT's managers. In addition, because of  
27 DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Member's catering  
28 assignments (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and

1 CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage  
2 Order and Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty  
3 rest periods to PLAINTIFF and the other CALIFORNIA CLASS Members when they worked  
4 catered parties and were paid piece rate pay only. As a result, DEFENDANT's failure to provide  
5 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
6 periods is evidenced by DEFENDANT's business records.

7       10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to  
8 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,  
9 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
10 CLASS with complete and accurate wage statements which failed to show, among other things,  
11 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab.  
12 Code § 226 provides that every employer shall furnish each of his or her employees with an  
13 accurate itemized wage statement in writing showing, among other things, gross wages earned  
14 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
15 time worked at each hourly rate. Additionally, the wage statements DEFENDANT issued to  
16 PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code Section 226(a)  
17 in that DEFENDANT failed to correctly list the correct name of the legal entity that was the  
18 employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside from the violations  
19 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage  
20 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
21 DEFENDANT from time to time provided PLAINTIFF and the other members of the  
22 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
2 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
3 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
4 accordingly.

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

16 13. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond  
17 and provide PLAINTIFF with her employment file. Section 1198.5 states that employees (and  
18 former employees) have the right to inspect personnel records maintained by the employer  
19 "related to the employee's performance or to any grievance concerning the employee."  
20 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF  
21 requested his employment file via certified mail multiple times and DEFENDANT failed to  
22 respond each time. As a result, PLAINTIFF is now entitled to a statutory penalty of \$750 and an  
23 award of attorneys' fees and costs for bringing this action.

24 14. 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 reporting time 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 DEFENDANT has yet to pay PLAINTIFF all of his overtime wages due to him and  
8 DEFENDANT has failed to pay any penalty wages owed to him under California Labor Code  
9 Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum  
10 or value of \$75,000.

### 11 **JURISDICTION AND VENUE**

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

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

### 21 **THE CALIFORNIA CLASS**

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

1 determined by the Court (the “CALIFORNIA CLASS PERIOD”) The amount in controversy  
2 for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
3 (\$5,000,000.00).

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

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

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

23 21. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
24 CLASS Members is impracticable.

25 22. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
26 California law by:

- 27 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code  
28 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having



1 in place company policies, practices and procedures that uniformly and  
2 systematically failed to record and pay PLAINTIFF and the other members of the  
3 CALIFORNIA CLASS for all time worked, including minimum wages owed and  
4 overtime wages owed for work performed by these employees;

- 5 b. Committing an act of unfair competition in violation of the UCL, by failing to  
6 provide mandatory meal and/or rest breaks to PLAINTIFF and the  
7 CALIFORNIA CLASS members.

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

- 10 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
11 joinder of all such persons is impracticable and the disposition of their claims as  
12 a class will benefit the parties and the Court;
- 13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
14 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
15 uniformly to every member of the CALIFORNIA CLASS;
- 16 c. The claims of the representative PLAINTIFF are typical of the claims of each  
17 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
18 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on  
19 an hourly basis who was subjected to the DEFENDANT's deceptive practice and  
20 policy which failed to provide the legally required meal and rest periods to the  
21 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
22 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
23 as a result of DEFENDANT's employment practices. PLAINTIFF and the  
24 members of the CALIFORNIA CLASS were and are similarly or identically  
25 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
26 misconduct engaged in by DEFENDANT; and
- 27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA CLASS, and have retained counsel who are

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

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

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

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

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

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

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

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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:

i. 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;

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

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

iii. 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

1                   adversely affect an individual’s job with DEFENDANT or with a  
2                   subsequent employer, the Class Action is the only means to assert their  
3                   claims through a representative; and

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

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

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

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

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

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

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

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

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

9 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
10 business records of DEFENDANT; and

11 i. Class treatment provides manageable judicial treatment calculated to bring an  
12 efficient and rapid conclusion to all litigation of all wage and hour related claims  
13 arising out of the conduct of DEFENDANT as to the members of the  
14 CALIFORNIA CLASS.

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

20

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 27. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, and Seventh  
23 causes of Action on behalf of a California sub-class, defined as all members of the  
24 CALIFORNIA CLASS who were employed by DEFENDANT in California (the  
25 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to  
26 the filing of the complaint and ending on the date as determined by the Court (the  
27 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.  
28

1 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS  
2 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 25 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
26 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
27 minimum wages, overtime wages, missed meal and rest breaks in violation of the  
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1 California Labor Code and California regulations and the applicable California  
2 Wage Order;

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

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

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

10 e. Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

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

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

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

27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained



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

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

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

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

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

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

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

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

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

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

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

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

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

35. 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 improprieties, and in obtaining adequate compensation for the damages and

1 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
2 LABOR SUB-CLASS;

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

18  
19 **FIRST CAUSE OF ACTION**

20 **UNLAWFUL BUSINESS PRACTICES**

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

22 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

26 37. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.  
27 Code § 17021.

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

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

9           39. By the conduct alleged herein, DEFENDANT has engaged and continues to  
10 engage in a business practice which violates California law, including but not limited to, the  
11 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
12 including Sections 204, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 1198.5, for which  
13 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code  
14 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
15 competition, including restitution of wages wrongfully withheld.

16           40. By the conduct alleged herein, DEFENDANT’s practices were unlawful and  
17 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
18 unscrupulous or substantially injurious to employees, and were without valid justification or  
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
21 withheld.

22           41. By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally  
24 mandated meal and rest periods and the required amount of compensation for missed meal and  
25 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
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1 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
2 withheld.

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

7 43. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
9 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
10 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

16 45. PLAINTIFF further demands on behalf of themselves and on behalf of each  
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
18 was not timely provided as required by law.

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

25 47. All the acts described herein as violations of, among other things, the Industrial  
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
27 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,  
28

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and  
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

22 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all  
Defendants)**

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

26 52. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
27 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor  
28 Code and the Industrial Welfare Commission requirements for DEFENDANT'S failure to

1 accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS  
2 Members.

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

5 54. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage  
7 than the minimum so fixed is unlawful.

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

10 56. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
11 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
12 amount of time they worked. As set forth herein, DEFENDANT'S uniform policy and practice  
13 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the  
14 other members of the CALIFORNIA LABOR SUB-CLASS.

15 57. DEFENDANT'S uniform pattern of unlawful wage and hour practices  
16 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
17 whole, as a result of implementing a uniform policy and practice that denied accurate  
18 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
19 CLASS in regards to minimum wage pay.

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

26 59. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,  
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
28 receive the correct minimum wage compensation for their time worked for DEFENDANT.



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

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

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

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

25          64.     PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
26 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
27 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by  
28 the California Labor Code and/or other applicable statutes. To the extent minimum wage

1 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
2 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§  
3 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
4 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA  
5 LABOR SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful,  
6 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-  
7 CLASS Members are entitled to seek and recover statutory costs.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

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

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

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

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

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

27 69. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
28 including minimum wage and overtime compensation and interest thereon, together with the

1 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for  
2 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

23 74. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
24 from the overtime requirements of the law. None of these exemptions are applicable to the  
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not  
27 subject to a valid collective bargaining agreement that would preclude the causes of action  
28 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself

1 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-  
2 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

26 82. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
27 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
28 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature

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

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

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

21  
22 **FIFTH CAUSE OF ACTION**

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

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

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

1           86.     From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
2 Members were required to work in excess of four (4) hours without being provided ten (10)  
3 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
4 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
5 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
6 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
7 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
8 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
9 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
10 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.  
11 In addition, because of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA LABOR  
12 SUB-CLASS Member's catering assignments (being paid a flat rate only), DEFENDANT failed  
13 to compensate PLAINTIFF and CALIFORNIA LABOR SUB- CLASS Members for their rest  
14 periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not have  
15 a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other  
16 CALIFORNIA LABOR SUB-CLASS Members when they worked catered parties and were  
17 paid piece rate pay only. As a result, DEFENDANT's failure to provide PLAINTIFF and the  
18 CALIFORNIA LABOR SUB-CLASS Members with all the legally required paid rest periods is  
19 evidenced by DEFENDANT's business records.

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

25           88.     As a proximate result of the aforementioned violations, PLAINTIFF and  
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.  
28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

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

8 90. Cal. Labor Code § 226 provides that an employer must furnish employees with  
9 an “accurate itemized” statement in writing showing:

- 10 a. Gross wages earned,
  - 11 b. (2) total hours worked by the employee, except for any employee whose  
12 compensation is solely based on a salary and who is exempt from payment  
13 of overtime under subdivision (a) of Section 515 or any applicable order  
14 of the Industrial Welfare Commission,
  - 15 c. the number of piecerate units earned and any applicable piece rate if the  
16 employee is paid on a piece-rate basis,
  - 17 d. all deductions, provided that all deductions made on written orders of the  
18 employee may be aggregated and shown as one item,
  - 19 e. net wages earned,
  - 20 f. the inclusive dates of the period for which the employee is paid,
  - 21 g. the name of the employee and his or her social security number, except that by  
22 January 1, 2008, only the last four digits of his or her social security number of  
23 an employee identification number other than social security number may be  
24 shown on the itemized statement,
  - 25 h. the name and address of the legal entity that is the employer, and
  - 26 i. all applicable hourly rates in effect during the pay period and the corresponding  
27 number of hours worked at each hourly rate by the employee.
- 28



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

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

22   **SEVENTH CAUSE OF ACTION**  
23   **FAILURE TO PAY WAGES WHEN DUE**  
24   **(Cal. Lab. Code § 203)**

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

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

28           94. Cal. Lab. Code § 200 provides that:

1 As used in this article:

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

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

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

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

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

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

23 98. Cal. Lab. Code § 203 provides:

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

99. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
CLASS Members terminated and DEFENDANT has not tendered payment of wages to these  
employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal  
and rest breaks, as required by law.

100. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the  
members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF  
demand up to thirty days of pay as penalty for not paying all wages due at time of termination  
for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS

1 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory  
2 costs as allowed by law.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and  
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes  
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
21 pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory  
23 damages for overtime compensation due to PLAINTIFF and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA  
25 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
27 the applicable IWC Wage Order;
- 28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

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which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

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

3. On all claims:

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

DATED: August 27, 2018

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: August 27, 2018

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay  
Attorney for PLAINTIFF