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

13 CHRISTINA CUMMINGS, an individual, on
14 behalf of herself and on behalf of all persons
15 similarly situated,

16 Plaintiff,

17 v.

18 G6 HOSPITALITY, LLC, a Limited Liability
Company; MOTEL 6 OPERATING, L.P., a
19 Limited Partnership; and DOES 1-50,
20 Inclusive,

21 Defendants.

Case No: 37-2018-00056207-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant G6 HOSPITALITY, LLC (“Defendant G6”) is a limited liability
8 company and at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California. Defendant MOTEL 6 OPERATING,
10 L.P. (“Defendant MOTEL 6”) is a limited partnership and at all relevant times mentioned herein
11 conducted and continues to conduct substantial and regular business throughout California.
12 Defendant G6 and Defendant MOTEL 6 are referred to herein collectively as
13 “DEFENDANTS.”

14 2. Defendant G6 and Defendant MOTEL 6 were the joint employers of PLAINTIFF
15 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for
16 respectively, and are therefore jointly responsible as employers for the conduct alleged herein
17 and collectively referred to herein as “DEFENDANTS”.

18 3. DEFENDANTS, doing business as “Motel 6,” own and operate an international
19 chain of hotels. DEFENDANTS primarily own and operate discount motels with over 1300
20 locations in the United States and Canada, including numerous locations in California.

21 4. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
22 employee entitled to overtime pay and meal and rest periods from August of 2018 to September
23 of 2018. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANTS
24 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
25 compensation from DEFENDANTS in the form of non-discretionary incentive wages.

26 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
27 defined as all individuals who are or previously were employed by Defendant G6 and/or
28 Defendant MOTEL 6 in California and classified as non-exempt employees (the
“CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the

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

4 6. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
5 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
6 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
7 which failed to lawfully compensate these employees for all their overtime worked.
8 DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair and
9 deceptive business practice whereby DEFENDANTS retained and continues to retain wages due
10 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
11 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
12 DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the
13 CALIFORNIA CLASS who have been economically injured by DEFENDANTS’ past and
14 current unlawful conduct, and all other appropriate legal and equitable relief.

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

24 8. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
26 agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees

4 **THE CONDUCT**

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

16 10. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and
17 continue to fail to accurately calculate and pay PLAINTIFF and the other members of the
18 CALIFORNIA CLASS for their overtime worked. DEFENDANTS unlawfully and unilaterally
19 failed to accurately calculate wages for overtime worked by PLAINTIFFS and other members
20 of the CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
21 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
22 forfeited wages due them for working overtime without compensation at the correct overtime
23 rates. DEFENDANTS' uniform policy and practice to not pay the members of the
24 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
25 applicable law is evidenced by DEFENDANTS' business records.

26 11. State law provides that employees must be paid overtime at one-and-one-
27 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
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1 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 12. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary incentive program provided all
7 employees paid on an hourly basis with incentive compensation when the employees met the
8 various performance goals set by DEFENDANTS. However, when calculating the regular rate
9 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
10 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
11 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
12 the incentive program to potential and new employees as part of the compensation package. As
13 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
14 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
15 in a systematic underpayment of overtime compensation to PLAINTIFF and other
16 CALIFORNIA CLASS Members by DEFENDANTS.

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

27 14. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
4 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period each workday in which these employees were required by
6 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
7 CLASS Members therefore forfeited meal breaks without additional compensation and in
8 accordance with DEFENDANTS' strict corporate policy and practice

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

20 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
21 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
22 DEFENDANTS also failed to provide PLAINTIFF and the other members of the
23 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
24 among other things, the correct overtime rate for overtime worked, including, work performed
25 in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the
26 correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that
27 every employer shall furnish each of his or her employees with an accurate itemized wage
28 statement in writing showing, among other things, gross wages earned and all applicable hourly

1 rates in effect during the pay period and the corresponding amount of time worked at each
2 hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to
3 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
4 Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF
5 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
6 Lab. Code § 226.

7 17. By reason of this uniform conduct applicable to PLAINTIFF and all
8 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
9 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
10 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
11 accurately calculate and record the correct overtime rate for the overtime worked by
12 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
13 employees’ overtime hour rates is the DEFENDANTS’ burden. As a result of DEFENDANT’S
14 intentional disregard of the obligation to meet this burden, DEFENDANTS failed to properly
15 calculate and/or pay all required overtime compensation for work performed by the members of
16 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
17 thereunder as herein alleged.

18 18. Specifically as to PLAINTIFF’S pay, DEFENDANTS provided compensation to
19 her in the form of two components. One component of PLAINTIFF’S compensation was a base
20 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
21 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFFS met certain
22 predefined performance requirements. PLAINTIFF met DEFENDANTS’ predefined eligibility
23 performance requirements in various pay periods throughout his employment with
24 DEFENDANTS and DEFENDANTS paid PLAINTIFF the incentive wages. During these pay
25 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
26 DEFENDANTS, PLAINTIFF also worked overtime for DEFENDANTS, but DEFENDANTS
27 never included the incentive compensation in PLAINTIFF’S regular rate of pay for the purposes
28 of calculating what should have been PLAINTIFF’S accurate overtime rate and thereby

1 underpaid PLAINTIFF for overtime worked throughout her employment with DEFENDANTS.
2 The incentive compensation paid by DEFENDANTS constituted wages within the meaning of
3 the California Labor Code and thereby should have been part of PLAINTIFF’S “regular rate of
4 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
5 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
7 off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-
8 duty meal period each workday in which he was required by DEFENDANTS to work ten (10)
9 hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
10 compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.
11 DEFENDANTS also provided PLAINTIFF with a paystub that failed to accurately display
12 PLAINTIFF’S correct rates of overtime pay and payments for missed meal and rest periods for
13 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not
14 fully paid PLAINTIFF the overtime compensation still owed to them or any penalty wages
15 owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
16 individually does not exceed the sum or value of \$75,000.

17 **JURISDICTION AND VENUE**

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

22 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
24 maintained offices and facilities in this County and/or conducts substantial business in this
25 County, and (ii) committed the wrongful conduct herein alleged in this County against members
26 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

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2 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
5 individuals who are or previously were employed by Defendant G6 and/or Defendant MOTEL 6
6 in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
7 time during the period beginning four (4) years prior to the filing of this Complaint and ending
8 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
9 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
10 dollars (\$5,000,000.00).

11 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

14 23. The California Legislature has commanded that "all wages... ..earned by any
15 person in any employment are due and payable twice during each calendar month, on days
16 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
17 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
18 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
19 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
20 however, is statutorily authorized to "establish exemptions from the requirement that an
21 overtime rate of compensation be paid... ..for executive, administrative, and professional
22 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
23 test of the exemption, [and] customarily and regularly exercises discretion and independent
24 judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
25 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
26 qualify for exemption from the above requirements.

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANTS systematically failed to correctly
3 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
4 members of the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of
5 this work, required employees to perform this work and permitted or suffered to permit this
6 overtime work.

7 25. DEFENDANTS have the legal burden to establish that each and every
8 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
9 accurately calculate the “regular rate of pay” by including the incentive compensation that
10 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANTS.
11 DEFENDANTS, however, as a matter of uniform and systematic policy and procedure failed to
12 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
13 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
14 overtime rate for all overtime worked, so as to satisfy their burden. This common business
15 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
16 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
17 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
18 claim.

19 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
20 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
21 employee for all overtime worked at the applicable rate, as required by California Labor Code
22 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
23 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
24 as to include all earnings in the overtime compensation calculation as required by California
25 Labor Code §§ 510, *et seq.*

26 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

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1 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
2 under California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
5 company policies, practices and procedures that failed to pay all wages due the
6 CALIFORNIA CLASS for all overtime worked, and failed to accurately record
7 the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 8 b. Committing an act of unfair competition in violation of the California Unfair
9 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
10 unfairly, and/or deceptively having in place a company policy, practice and
11 procedure that failed to correctly calculate overtime compensation due to
12 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 13 c. Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
15 provide mandatory meal and/or rest breaks to PLAINTIFF and the
16 CALIFORNIA CLASS members; and
- 17 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that uniformly and systematically
20 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
21 CLASS for all time worked, including minimum wages owed and overtime
22 wages owed for work performed by these employees.

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

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

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA CLASS will apply
3 uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFF are typical of the claims of each
5 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
6 of the CALIFORNIA CLASS, was subjected to the uniform employment
7 practices of DEFENDANTS and was a non-exempt employee paid on an hourly
8 basis and paid additional non-discretionary incentive wages who was subjected
9 to the DEFENDANTS’ practice and policy which failed to pay the correct rate of
10 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
11 CALIFORNIA CLASS and thereby systematically under pays overtime
12 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
13 injury as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
14 members of the CALIFORNIA CLASS were and are similarly or identically
15 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
16 misconduct engaged in by DEFENDANTS; and
- 17 d. The representative PLAINTIFF will fairly and adequately represent and protect
18 the interest of the CALIFORNIA CLASS, and has retained counsel who are
19 competent and experienced in Class Action litigation. There are no material
20 conflicts between the claims of the representative PLAINTIFF and the members
21 of the CALIFORNIA CLASS that would make class certification inappropriate.
22 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
23 CALIFORNIA CLASS Members.
- 24 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
25 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
- 26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions
28 by individual members of the CALIFORNIA CLASS will create the risk of:

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. 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 DEFENDANTS uniformly failed to pay all wages due, including the correct overtime rate, for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. 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 seek declaratory relief holding that the DEFENDANTS’ 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:

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- 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 DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is

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likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA CLASS.

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

15
16 **THE CALIFORNIA LABOR SUB-CLASS**
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18 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
19 causes of Action on behalf of a California sub-class, defined as all members of the
20 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
21 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
22 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
23 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
24 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
25 (\$5,000,000.00).

26 34. DEFENDANTS, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

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

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

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

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

- 20 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
21 overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS
22 in violation of the California Labor Code and California regulations and the
23 applicable California Wage Order;
- 24 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
25 to overtime compensation for overtime worked under the overtime pay
26 requirements of California law;

- 1 c. Whether DEFENDANTS failed to accurately record the applicable overtime
- 2 rates for all overtime worked PLAINTIFF and the other members of the
- 3 CALIFORNIA LABOR SUB-CLASS;
- 4 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
- 5 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 6 thirty (30) minute meal breaks and rest periods;
- 7 e. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
- 8 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 9 statements;
- 10 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 11 conduct;
- 12 g. The proper measure of damages and penalties owed to the members of the
- 13 CALIFORNIA LABOR SUB-CLASS; and
- 14 h. Whether DEFENDANTS' conduct was willful.

15 38. DEFENDANTS, as a matter of company policy, practice and procedure, failed to
16 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
17 Members and failed to provide accurate records of the applicable overtime rates for the
18 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
19 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
20 basis by DEFENDANTS according to uniform and systematic company procedures as alleged
21 herein above. This business practice was uniformly applied to each and every member of the
22 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
23 adjudicated on a class-wide basis.

24 39. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
- 28

1 correct overtime pay for which DEFENDANTS are liable pursuant to Cal. Lab.
2 Code § 1194 & § 1198;

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

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

11 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
13 statement in writing showing all accurate and applicable overtime rates in effect
14 during the pay period and the corresponding amount of time worked at each
15 overtime rate by the employee;

16 e. Violating Cal. Lab. Code § 510 by failing to pay PLAINTIFF and the
17 CALIFORNIA CLASS members the correct and accurate overtime
18 rate; and

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

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

27 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
28 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members

1 is impracticable and the disposition of their claims as a class will benefit the
2 parties and the Court;

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

7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
10 employee paid on an hourly basis and paid additional non-discretionary incentive
11 wages who was subjected to the DEFENDANTS' practice and policy which
12 failed to pay the correct rate of overtime wages due to the CALIFORNIA
13 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
14 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
17 of misconduct engaged in by DEFENDANTS; and

18 d. The representative PLAINTIFF will fairly and adequately represent and protect
19 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
20 counsel who are competent and experienced in Class Action litigation. There are
21 no material conflicts between the claims of the representative PLAINTIFF and
22 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
23 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
24 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
25 Members.

26 41. In addition to meeting the statutory prerequisites to a Class Action, this action is
27 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
28

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
 - 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or
12 substantially impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
17 uniformly failed to pay all wages due, including the correct overtime rate, for all
18 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
19 required by law;
- 20 c. Common questions of law and fact predominate as to the members of the
21 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
22 violations of California Law as listed above, and predominate over any question
23 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
24 Class Action is superior to other available methods for the fair and efficient
25 adjudication of the controversy, including consideration of:
- 26 i. The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of separate
28 actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA LABOR SUB-CLASS
3 Members when compared to the substantial expense and burden of
4 individual prosecution of this litigation;

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

7 1. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS, which
9 would establish incompatible standards of conduct for the
10 DEFENDANTS; and/or,

11 2. Adjudications with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS would as a practical matter
13 be dispositive of the interests of the other members not parties to
14 the adjudication or substantially impair or impede their ability to
15 protect their interests;

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

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

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

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- 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 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
3 PERIOD; and

- 4 i. Class treatment provides manageable judicial treatment calculated to bring an
5 efficient and rapid conclusion to all litigation of all wage and hour related claims
6 arising out of the conduct of DEFENDANTS as to the members of the
7 CALIFORNIA LABOR SUB-CLASS.

8
9 **FIRST CAUSE OF ACTION**

10 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

16 44. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
17 Code § 17021.

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

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

26 46. By the conduct alleged herein, DEFENDANTS have engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which this
2 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
3 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
4 competition, including restitution of wages wrongfully withheld.

5 47. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
6 unfair in that these practices violated public policy, were immoral, unethical, oppressive
7 unscrupulous or substantially injurious to employees, and were without valid justification or
8 utility for which this Court should issue equitable and injunctive relief pursuant to Section
9 17203 of the California Business & Professions Code, including restitution of wages wrongfully
10 withheld.

11 48. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
12 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
13 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
14 accurately to record the applicable rate of all overtime worked, and failed to provide the
15 required amount of overtime compensation due to a systematic miscalculation of the overtime
16 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
17 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
18 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
19 including restitution of wages wrongfully withheld.

20 49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
21 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANTS.

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

27 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

4 52. PLAINTIFF further demands on behalf of herself and on behalf of each
5 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
6 was not timely provided as required by law.

7 53. By and through the unlawful and unfair business practices described herein,
8 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
9 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
10 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
11 detriment of these employees and to the benefit of DEFENDANTS so as to allow
12 DEFENDANT to unfairly compete against competitors who comply with the law.

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

18 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
19 and do, seek such relief as may be necessary to restore to them the money and property which
20 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
21 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
22 unfair business practices, including earned but unpaid wages for all overtime worked.

23 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
24 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
25 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
26 engaging in any unlawful and unfair business practices in the future.

27 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

1 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.
2 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
3 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
4 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
5 engage in these unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

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

9 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
10 **Defendants)**

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

14 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
16 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to
17 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
18 Members.

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

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

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

26 63. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
28 amount of time they work. As set forth herein, DEFENDANT’S uniform policy and practice

1 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS.

3 64. DEFENDANTS' uniform pattern of unlawful wage and hour practices
4 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
5 whole, as a result of implementing a uniform policy and practice that denies accurate
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS in regards to minimum wage pay.

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

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

17 67. 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 than
19 they were entitled to, constituting a failure to pay all earned wages.

20 68. By virtue of DEFENDANTS' 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 economic
24 injury in amounts which are presently unknown to them and which will be ascertained
25 according to proof at trial.

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22 **THIRD CAUSE OF ACTION**

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

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

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

1 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
4 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
5 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly
6 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
7 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
8 any workweek.

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

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

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

19 77. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
20 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
21 amount of overtime worked and correct applicable overtime rate for the amount of overtime
22 they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to
23 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
25 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for
26 all overtime worked.

27 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices
28 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
whole, as a result of implementing a uniform policy and practice that denied accurate
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS for all overtime worked, including, the work performed in excess of eight (8) hours in a
2 workday and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

23 90. DEFENDANTS further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
25 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
26 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
27 each workday that a meal period was not provided.
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- 1 h. The name and address of the legal entity that is the employer; and
- 2 i. All applicable hourly rates in effect during the pay period and the corresponding
- 3 number of hours worked at each hourly rate by the employee.

4 98. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
5 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
6 DEFENDANTS also failed to provide PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
8 among other things, the correct overtime rate for overtime worked, including, work performed
9 in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the
10 correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that
11 every employer shall furnish each of his or her employees with an accurate itemized wage
12 statement in writing showing, among other things, gross wages earned and all applicable hourly
13 rates in effect during the pay period and the corresponding amount of time worked at each
14 hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to
15 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
16 Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF
17 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
18 Lab. Code § 226.

19 99. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
22 expended calculating the correct rates for the overtime worked and the amount of employment
23 taxes which were not properly paid to state and federal tax authorities. These damages are
24 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
26 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
27 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
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1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3
4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

12 101. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

1 105. Cal. Lab. Code § 203 provides:

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

7 106. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
8 CLASS Members terminated and DEFENDANTS have not tendered payment of overtime
9 wages, to these employees who actually worked overtime, as required by law.

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

16 **PRAYER FOR RELIEF**

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

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

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

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

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3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: October 29, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: October 29, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff