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

13 LISA RAMIREZ, an individual, on behalf of
14 herself and on behalf of all persons similarly
15 situated,

16 Plaintiff,

17 v.

18 CAREFUSION RESOURCES, LLC, a
19 Limited Liability Company; and DOES 1-50,
Inclusive,

20 Defendants.

Case No: 37-2018-00058078-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) 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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1 Plaintiff Lisa Ramirez (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees, alleges on information and belief,
3 except for her own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant CareFusion Resources, LLC (“DEFENDANT”) is a limited liability
7 company and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT specializes in medical technology which aims to both reduce
10 medication errors and to prevent healthcare associated infections. DEFENDANT is a subsidiary
11 of Becton, Dickinson and Company.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from October 2016 to November
14 2017. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
15 non-exempt employee paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

24 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
27 which failed to lawfully compensate these employees for all their overtime worked.
28 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
business practice whereby DEFENDANT retained and continues to retain wages due to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
2 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
3 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
4 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
5 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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THE CONDUCT

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2 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
3 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
5 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
6 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
7 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
8 forfeited wages due them for working overtime without compensation at the correct overtime
9 rates. DEFENDANT’s uniform policy and practice to not pay the members of the
10 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
11 applicable law is evidenced by DEFENDANT’s business records.

12 9. State law provides that employees must be paid overtime at one-and-one-
13 halftimes their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members
14 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
15 employee’s performance.

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

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

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

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

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

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

20 15. By reason of this uniform conduct applicable to PLAINTIFF and all
21 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
22 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
23 *seq.*(the "UCL"), by engaging in a company-wide policy and procedure which failed to
24 accurately calculate and record the correct overtime rate for the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
26 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
27 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
28 calculate and/or pay all required overtime compensation for work performed by the members of

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

3 16. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
4 her in the form of two components. One component of PLAINTIFF’S compensation was a base
5 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
6 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFFS met certain
7 predefined performance requirements. PLAINTIFF met DEFENDANT’S predefined eligibility
8 performance requirements in various pay periods throughout his employment with
9 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay
10 periods in which PLAINTIFF was paid the non-discretionary incentive wages by
11 DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT never
12 included the incentive compensation in PLAINTIFF’S regular rate of pay for the purposes of
13 calculating what should have been PLAINTIFF’S accurate overtime rate and thereby underpaid
14 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The
15 incentive compensation paid by DEFENDANT constituted wages within the meaning of the
16 California Labor Code and thereby should have been part of PLAINTIFF’S “regular rate of
17 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and
18 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work
19 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an
20 off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-
21 duty meal period each workday in which he was required by DEFENDANT to work ten (10)
22 hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.
24 DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately display
25 PLAINTIFF’S correct rates of overtime pay and payments for missed meal and rest periods for
26 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not
27 fully paid PLAINTIFF the overtime compensation still owed to them or any penalty wages
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1 owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
2 individually does not exceed the sum or value of \$75,000.

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4 **JURISDICTION AND VENUE**

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

9 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
11 maintained offices and facilities in this County and/or conducts substantial business in this
12 County, and (ii) committed the wrongful conduct herein alleged in this County against members
13 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

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15 **THE CALIFORNIA CLASS**

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17 19. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
18 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
19 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
20 individuals who are or previously were employed by DEFENDANT in California and classified
21 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
22 beginning four (4) years prior to the filing of this Complaint and ending on the date as
23 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
24 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
25 (\$5,000,000.00).

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

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

14 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
18 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
19 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
20 work, required employees to perform this work and permitted or suffered to permit this
21 overtime work.

22 23. DEFENDANT has the legal burden to establish that each and every
23 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
24 accurately calculate the “regular rate of pay” by including the incentive compensation that
25 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
26 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
27 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
28 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable

1 overtime rate for all overtime worked, so as to satisfy their burden. This common business
2 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
3 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
4 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
5 claim.

6 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
7 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
8 employee for all overtime worked at the applicable rate, as required by California Labor Code
9 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
10 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
11 as to include all earnings in the overtime compensation calculation as required by California
12 Labor Code §§ 510, *et seq.*

13 25. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
18 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all wages due the
20 CALIFORNIA CLASS for all overtime worked, and failed to accurately record
21 the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 22 b. Committing an act of unfair competition in violation of the California Unfair
23 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
24 unfairly, and/or deceptively having in place a company policy, practice and
25 procedure that failed to correctly calculate overtime compensation due to
26 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to

1 provide mandatory meal and/or rest breaks to PLAINTIFF and the
2 CALIFORNIA CLASS members;

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

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

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

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

24 d. The representative PLAINTIFF will fairly and adequately represent and protect
25 the interest of the CALIFORNIA CLASS, and has retained counsel who are
26 competent and experienced in Class Action litigation. There are no material
27 conflicts between the claims of the representative PLAINTIFF and the members
28 of the CALIFORNIA CLASS that would make class certification inappropriate.

1 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
2 CALIFORNIA CLASS Members.

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

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

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

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

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

22 i. With respect to the First Cause of Action, the final relief on behalf of the
23 CALIFORNIA CLASS sought does not relate exclusively to restitution
24 because through this claim PLAINTIFF seek declaratory relief holding
25 that the DEFENDANT's policy and practices constitute unfair
26 competition, along with declaratory relief, injunctive relief, and incidental
27 equitable relief as may be necessary to prevent and remedy the conduct
28 declared to constitute unfair competition;

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

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate actions in
9 that the substantial expense of individual actions will be avoided to
10 recover the relatively small amount of economic losses sustained by the
11 individual CALIFORNIA CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this
13 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 CLASS, which would establish
18 incompatible standards of conduct for the DEFENDANT; and/or;

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

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

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

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

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

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

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

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

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

- 23 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
24 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
25 violation of the California Labor Code and California regulations and the
26 applicable California Wage Order;

- b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;
- c. Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

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

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee; and
- d. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-

1 CLASS and will apply uniformly to every member of the CALIFORNIA
2 LABOR SUB-CLASS;

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

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

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

24 a. Without class certification and determination of declaratory, injunctive, statutory
25 and other legal questions within the class format, prosecution of separate actions
26 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
27 the risk of:
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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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.

40. 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;

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- 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 DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has 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 DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

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

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6 **FIRST CAUSE OF ACTION**

7 **UNLAWFUL BUSINESS PRACTICES**

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

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

10 41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
14 Code § 17021.

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

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

26 44. By the conduct alleged herein, DEFENDANT has 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
including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1198, for which this Court should
issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may

1 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
2 restitution of wages wrongfully withheld.

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

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

18 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

22 48. By the conduct alleged herein, DEFENDANT's practices were also unfair and
23 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

26 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As

1 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

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6 **SECOND CAUSE OF ACTION**

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

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

11 56. 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 57. 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 the applicable rates for all overtime worked by PLAINTIFF and other
18 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
19 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
20 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
any workweek.

21 58. 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 59. Cal. Lab. Code § 510 further provides that employees in California shall not be
24 employed more than eight (8) hours per workday and/or more than forty (40) hours per
25 workweek unless they receive additional compensation beyond their regular wages in amount
26 specified by law.

27 60. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.

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

3 61. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of overtime worked and correct applicable overtime rate for the amount of overtime
6 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
9 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
10 all overtime worked.

11 62. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
13 result of implementing a uniform policy and practice that denied accurate compensation to
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all
15 overtime worked, including, the work performed in excess of eight (8) hours in a workday
16 and/or forty (40) hours in any workweek.

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

23 64. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
25 receive full compensation for all overtime worked.

26 65. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

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

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

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

27 70. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

1 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
2 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
4 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
5 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice.

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

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

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17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

14
15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
17 **(Cal. Lab. Code § 226)**

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

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

23 81. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

- 25 a. Gross wages earned;
- 26 b. Total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

- 1 c. The number of piece rate units earned and any applicable piece rate if the
- 2 employee is paid on a piece-rate basis;
- 3 d. All deductions, provided that all deductions made on written orders of the
- 4 employee may be aggregated and shown as one item;
- 5 e. Net wages earned;
- 6 f. The inclusive dates of the period for which the employee is paid;
- 7 g. The name of the employee and his or her social security number, except that by
- 8 January 1, 2008, only the last four digits of his or her social security number or
- 9 an employee identification number other than a social security number may be
- 10 shown on the itemized statement;
- 11 h. The name and address of the legal entity that is the employer; and
- 12 i. All applicable hourly rates in effect during the pay period and the corresponding
- 13 number of hours worked at each hourly rate by the employee.

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

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1 87. Cal. Lab. Code § 202 provides, in relevant part, that:

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

11 88. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
12 SUB-CLASS Members’ employment contract.

13 89. Cal. Lab. Code § 203 provides:

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

19 90. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
20 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
21 to these employees who actually worked overtime, as required by law.

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

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PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
2 severally, as follows:

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4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, and Sixth Causes of
17 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
18 pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
22 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per member of the
27 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
28 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and

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- an award of costs for violation of Cal. Lab. Code § 226; and
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On 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 §2802.

DATED: November 16, 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: November 16, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff