

ENDORSED
FILED
San Francisco County Superior Court

MAR 20 2019

CLERK OF THE COURT
BY: SANDRA L. SCHIRO
Deputy Clerk

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **IN AND FOR THE COUNTY OF COUNTY OF SAN FRANCISCO**

20 HEATHER BROUGHTON, an individual, on
21 behalf of herself and on behalf of all persons
22 similarly situated,

23 Plaintiff,

24 v.

25 NFG SAN FRANCISCO, LLC., a Limited
26 Liability Company; and DOES 1 through 50,
27 inclusive,

28 Defendants.

Case No. **CGC-19-574657**

BY FAX
LEGAL LLC

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 5) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 6) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 **THE PARTIES**

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

9 2. DEFENDANT is a franchisee of Domino’s Pizza. DEFENDANT is one of
10 Domino’s Pizza’s largest growth partners with 40+ franchises.

11 3. PLAINTIFF was employed by DEFENDANT in California from June 2018 to
12 August 2018 and was at all times classified by DEFENDANT as a non-exempt employee, paid
13 on an hourly basis, and entitled to the legally required meal and rest periods.

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

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

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

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

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

20 **THE CONDUCT**

21 8. As a result of their rigorous work schedules, PLAINTIFF and other
22 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
23 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other
24 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
25 more than five (5) hours during some shifts without receiving a meal break. Further,
26 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
27 off-duty meal period for some workdays in which these employees are required by
28 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to provide
PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is

1 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
2 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
3 accordance with DEFENDANT's strict corporate policy and practice.

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

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

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, knowingly and systematically
6 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
7 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
8 purposefully avoid the payment for all time worked as required by California law which allows
9 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
10 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

24 13. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
25 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
26 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
27 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed
28 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent her

1 from being relieved of all of her duties for the legally required off-duty meal periods. As a
2 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is
3 evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately
4 recording all missed meal and rest periods and/or reporting time wages due, the wage statements
5 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
6 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
7 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
8 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed the
9 sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

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

20 **THE CALIFORNIA CLASS**

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

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

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

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

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

22 20. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 21. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
25 California law by:

- 26 a. Committing an act of unfair competition in violation of the UCL, by failing to
27 provide mandatory meal and/or rest breaks to PLAINTIFF and the
28 CALIFORNIA CLASS members.

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

- 3 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
4 joinder of all such persons is impracticable and the disposition of their claims as
5 a class will benefit the parties and the Court;
- 6 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
7 raised in this Complaint are common to the CALIFORNIA CLASS will apply
8 uniformly to every member of the CALIFORNIA CLASS;
- 9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
11 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
12 an hourly basis who was subjected to the DEFENDANT's deceptive practice and
13 policy which failed to provide the legally required meal and rest periods to the
14 CALIFORNIA CLASS and thereby systematically underpaid compensation to
15 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
16 as a result of DEFENDANT's employment practices. PLAINTIFF and the
17 members of the CALIFORNIA CLASS were and are similarly or identically
18 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
19 misconduct engaged in by DEFENDANT; and
- 20 d. The representative PLAINTIFF will fairly and adequately represent and protect
21 the interest of the CALIFORNIA CLASS, and have retained counsel who are
22 competent and experienced in Class Action litigation. There are no material
23 conflicts between the claims of the representative PLAINTIFF and the members
24 of the CALIFORNIA CLASS that would make class certification inappropriate.
25 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
26 CALIFORNIA CLASS Members.

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

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- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - 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 DEFENDANT uniformly failed to pay all wages due to 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 seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other

1 available methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

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

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

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

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

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

26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will
28 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.

24. 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 DEFENDANT’s employment practices were 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 DEFENDANT’s actions have inflicted upon the CALIFORNIA 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 CLASS for the injuries sustained;

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
3 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 DEFENDANT; 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 DEFENDANT as to the members of the
9 CALIFORNIA CLASS.

10 25. DEFENDANT maintains records from which the Court can ascertain and
11 identify by job title each of DEFENDANT's employees who as have been systematically,
12 intentionally and uniformly subjected to DEFENDANT's 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.

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16 **THE CALIFORNIA LABOR SUB-CLASS**

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

25 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
26 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
27 requirements, and the applicable provisions of California law, intentionally, knowingly,
28 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to

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

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

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

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

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

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

3 e. Whether DEFENDANT's conduct was willful.

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

6 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
8 statement in writing showing the corresponding correct amount of wages earned
9 by the employee;

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

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

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

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

26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
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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 LABOR SUB-CLASS, was a non-exempt
6 employee paid on an hourly basis who was subjected to the DEFENDANT's
7 practice and policy which failed to pay the correct amount of wages due to the
8 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
9 a result of DEFENDANT's employment practices. PLAINTIFF and the members
10 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
11 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
12 misconduct engaged in by DEFENDANT; and

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

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

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

27 i. Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA LABOR SUB-CLASS which would establish

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

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

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

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

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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.

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

a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of

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- 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 who were employed by DEFENDANT in California during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

11 36. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

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

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

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

15 41. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,
16 unfair and deceptive in that DEFENDANT’s employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

19 42. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
20 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
21 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
22 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3 **SECOND 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**
7 **Defendants)**

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

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

26 52. DEFENDANT further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

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7 **THIRD CAUSE OF ACTION**

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

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

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

15 55. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
16 Members were required to work in excess of four (4) hours without being provided ten (10)
17 minute rest periods. Further, these employees were denied their first rest periods of at least ten
18 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
19 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
20 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
21 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
22 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
23 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
24 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

4
5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code § 226)**

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

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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 of
13 this Complaint.

14 59. Cal. Labor Code § 226 provides that an employer must furnish employees with
15 an “accurate itemized” statement in writing showing:

- 16 a. Gross wages earned,
17 b. (2) total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment
19 of overtime under subdivision (a) of Section 515 or any applicable order
20 of the Industrial Welfare Commission,
21 c. the number of piecerate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis,
23 d. all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item,
25 e. net wages earned,
26 f. the inclusive dates of the period for which the employee is paid,
27 g. the name of the employee and his or her social security number, except that by
28 January 1, 2008, only the last four digits of his or her social security number of

1 an employee identification number other than social security number may be
2 shown on the itemized statement,

3 h. the name and address of the legal entity that is the employer, and

4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

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

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2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN DUE**

4 **(Cal. Lab. Code § 203)**

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

7 62. 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 63. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

21 65. Cal. Lab. Code § 202 provides, in relevant part, that:

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

29 66. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

31 67. Cal. Lab. Code § 203 provides:

32 If an employer willfully fails to pay, without abatement or reduction, in accordance with
33 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
34 who quits, the wages of the employee shall continue as a penalty from the due date

1 thereof at the same rate until paid or until an action therefor is commenced; but the
2 wages shall not continue for more than 30 days.

3 68. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
4 CLASS Members terminated and DEFENDANT has not tendered payment of wages to these
5 employees who missed meal and rest breaks, as required by law.

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

12 **SIXTH CAUSE OF ACTION**

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

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

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

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

18 71. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
20 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
23 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
24 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
25 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
26 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
27 subject to arbitration.
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1 72. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of January 11, 2018
6 until the present (the "AGGRIEVED EMPLOYEES").

7 73. On January 11, 2019, PLAINTIFF gave written notice by certified mail to the
8 Labor and Workforce Development Agency (the "Agency") and the employer of the
9 specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
11 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
12 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
13 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
14 to all AGGRIEVED EMPLOYEES as herein defined.

15 74. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because Defendant (a) failed to provide PLAINTIFF and other
17 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (b) failed to provide accurate
18 itemized wage statements, and (c) failed to timely pay wages, all in violation of the applicable
19 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
20 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1198, and the applicable Industrial Wage
21 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
22 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
23 General Act of 2004 as the representative of the State of California for the illegal conduct
24 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

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

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

- 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, and Fifth 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 wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

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

DATED: March 20, 2019

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: March 20, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani G. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #18901

January 11, 2019

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

NFG SAN FRANCISCO, LLC

c/o CT Corporation System

818 West Seventh Street, Suite 930

Los Angeles, CA 90017

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Heather Broughton (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against NFG San Francisco, LLC (“Defendant”). Plaintiff was employed by Defendant in California from June 2018 to August 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 512, 558, 1194, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore

incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Heather Broughton

1 **ZAKAY LAW GROUP, APC**
2 Shani O. Zakay (State Bar #277924)
3 3990 Old Town Ave. Ste. C204
4 San Diego, CA 92110
5 Telephone: (619)255-9047
6 Website: www.zakaylaw.com

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

10
11 HEATHER BROUGHTON, an
12 individual, on behalf of herself and on
13 behalf of all persons similarly situated,

14 Plaintiff,

15 vs.

16 NFG SAN FRANCISCO LLC, a
17 California Foreign Limited Liability
18 Company, and DOES 1 through 50,
19 inclusive,

20 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a franchisee of Domino’s Pizza. DEFENDANT is one of
10 Domino’s Pizza largest growth partners with 40+ franchises.

11 3. PLAINTIFF was employed by DEFENDANT in California from June of 2018 to
12 August of 2018 and was at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods.

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

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

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

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

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

21
22 **THE CONDUCT**

23 8. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also from time to time unable to take thirty (30) minute
25 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
26 other CALIFORNIA CLASS Members were required to perform work as ordered by
27 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
28 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members

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

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

18 10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
19 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with complete and accurate wage statements which
21 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
22 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
23 an accurate itemized wage statement in writing showing, among other things, gross wages
24 earned and all applicable hourly rates in effect during the pay period and the corresponding
25 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
26 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
27 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
28 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from

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

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

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

25 13. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
26 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
27 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
28 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed

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

11 JURISDICTION AND VENUE

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

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

23 ///

24 THE CALIFORNIA CLASS

25 16. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
28 all individuals who are or previously were employed by DEFENDANT in California and

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

6 17. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

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

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

25 20. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 21. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

1 (a) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

25 (d) The representative PLAINTIFF will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation.
28 There are no material conflicts between the claims of the representative

1 PLAINTIFF and the members of the CALIFORNIA CLASS that would
2 make class certification inappropriate. Counsel for the CALIFORNIA
3 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
4 Members.

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

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

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

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

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

25 1) With respect to the First Cause of Action, the final relief on behalf
26 of the CALIFORNIA CLASS sought does not relate exclusively to
27 restitution because through this claim PLAINTIFF seeks
28 declaratory relief holding that the DEFENDANT's policy and

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

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

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

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

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

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

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- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

24. 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s 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

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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 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 CLASS for the injuries sustained;

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

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

26. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of Action

1 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
2 are or previously were employed by DEFENDANT in California (the “CALIFORNIA LABOR
3 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint
4 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
5 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
6 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
7 (\$5,000,000.00).

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

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

25 29. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 compensation due to members of the CALIFORNIA LABOR SUB-
3 CLASS for missed meal and rest breaks in violation of the California
4 Labor Code and California regulations and the applicable California Wage
5 Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed conduct;
- 11 (d) The proper measure of damages and penalties owed to the members of the
12 CALIFORNIA LABOR SUB-CLASS; and,
- 13 (e) Whether DEFENDANT's conduct was willful.

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

- 16 (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
17 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
18 itemized statement in writing showing the corresponding correct amount
19 of wages earned by the employee;
- 20 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with
22 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
23 and the legally required off-duty rest breaks; and,
- 24 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
25 when an employee is discharged or quits from employment, the employer
26 must pay the employee all wages due without abatement, by failing to
27 tender full payment and/or restitution of wages owed or in the manner
28 required by California law to the members of the CALIFORNIA LABOR

1 SUB-CLASS who have terminated their employment.

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

4 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
5 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
6 Members is impracticable and the disposition of their claims as a class
7 will benefit the parties and the Court;

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

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

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

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Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will 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 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 2) 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 fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- (c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS

1 Members, and a Class Action is superior to other available methods for
2 the fair and efficient adjudication of the controversy, including
3 consideration of:

- 4 1) The interests of the members of the CALIFORNIA LABOR SUB-
5 CLASS in individually controlling the prosecution or defense of
6 separate actions in that the substantial expense of individual
7 actions will be avoided to recover the relatively small amount of
8 economic losses sustained by the individual CALIFORNIA
9 LABOR SUB-CLASS Members when compared to the substantial
10 expense and burden of individual prosecution of this litigation;
- 11 2) Class certification will obviate the need for unduly duplicative
12 litigation that would create the risk of:
- 13 A. Inconsistent or varying adjudications with respect to
14 individual members of the CALIFORNIA LABOR SUB-
15 CLASS, which would establish incompatible standards of
16 conduct for the DEFENDANT; and/or,
- 17 B. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical
19 matter be dispositive of the interests of the other members
20 not parties to the adjudication or substantially impair or
21 impede their ability to protect their interests;
- 22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will
24 avoid asserting their legal rights out of fear of retaliation by
25 DEFENDANT, which may adversely affect an individual's job
26 with DEFENDANT or with a subsequent employer, the Class
27 Action is the only means to assert their claims through a
28 representative; and,

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

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

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

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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 who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

1 competition as follows:

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

6 Cal. Bus. & Prof. Code § 17203.

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

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

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

28 41. By the conduct alleged herein, DEFENDANT's practices were also unlawful,

1 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
2 other members of the CALIFORNIA CLASS to be underpaid during their employment with
3 DEFENDANT.

4 42. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
6 to provide all legally required meal breaks to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

13 44. PLAINTIFF further demands on behalf of herself and each member of the
14 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
15 period was timely provided as required by law.

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

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

27 47. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
28 and do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
3 unfair business practices, including earned but unpaid wages for all time worked.

4 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
5 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
6 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
7 engaging in any unlawful and unfair business practices in the future.

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

15
16 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

18
19 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

16
17 **FOURTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 226]**

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

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

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

27 (1) gross wages earned,

28 (2) total hours worked by the employee, except for any employee whose compensation

1 is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
3 Commission,

4 (3) the number of piecerate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security number or an
12 employee identification number other than a social security number may be shown on
13 the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 60. When DEFENDANT did not accurately record PLAINTIFF's and other
18 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
19 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
20 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
21 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
22 thereby also failed to set forth the correct wages earned by the employees.

23 61. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
24 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
26 calculating the correct wages for all missed meal and rest breaks and the amount of employment
27 taxes which were not properly paid to state and federal tax authorities. These damages are
28 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA

1 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
2 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
3 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
4 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
5 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

6
7 **FIFTH CAUSE OF ACTION**

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

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

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

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

15 63. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

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

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

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

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

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

5 67. Cal. Lab. Code § 203 provides:

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

11 68. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
12 Members has terminated and DEFENDANT has not tendered payment of wages, to these
13 employees who missed meal and rest breaks, as required by law.

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

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

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

26 B) An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

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

- 1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 4 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 5 A) That the Court certify the Second, Third, Fourth and Fifth Causes of Action
6 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
7 to Cal. Code of Civ. Proc. § 382;
- 8 B) Compensatory damages, according to proof at trial, due PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS, during the
10 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
11 at the statutory rate;
- 12 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
13 in which a violation occurs and one hundred dollars (\$100) per each member of
14 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
15 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
16 an award of costs for violation of Cal. Lab. Code § 226;
- 17 D) The wages of all terminated employees from the CALIFORNIA LABOR
18 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
19 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
20 and,
- 21 E) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the
22 other members of the CALIFORNIA CLASS with all legally required off-duty,
23 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;.
- 24 3. On all claims:
- 25 A) An award of interest, including prejudgment interest at the legal rate;
- 26 B) Such other and further relief as the Court deems just and equitable; and,
- 27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
28 law, including, but not limited to, pursuant to Labor Code §218.5, §226, §1194

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and/or §2802.

Dated: January 11, 2019

ZAKAY LAW GROUP, APC

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: January 11, 2019

ZAKAY LAW GROUP, APC

By:

Shani O. Zakay
Attorney for Plaintiff