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

11 JOHN MORENO, an individual, on behalf of  
12 himself and on behalf of all persons similarly  
situated,

13 Plaintiff,

14 v.

15 DA KITCHEN, INC. dba HOMESTYLE  
16 HAWAIIAN, a California corporation; and  
DOES 1-50, Inclusive,

17 Defendants.

Case No: 37-2019-00024885-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226
- 7) FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5.

**DEMAND FOR A JURY TRIAL**

25 Plaintiff JOHN MORENO (“PLAINTIFF”), an individual, on behalf of himself and  
26 all other similarly situated current and former employees, alleges on information and  
27 belief, except for his own acts and knowledge which are based on personal knowledge, the  
28 following:

**PRELIMINARY ALLEGATIONS**

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2           1. Defendant DA KITCHEN, INC. dba HOMESTYLE HAWAIIAN  
3 (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein  
4 conducted and continues to conduct substantial and regular business throughout California.

5           2. DEFENDANT is an island cuisine restaurant and catering company.

6           3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
7 employee, entitled to overtime and California compliant meal and rest breaks, from November  
8 2017 to April 2019 and at all times classified by DEFENDANT as a non-exempt employee, paid  
9 on an hourly basis, and entitled to the legally required meal and rest periods.

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

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

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

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

### **THE CONDUCT**

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19           8. DEFENDANT's position was a non-exempt position and was in fact classified as  
20 non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA CLASS Members  
21 employed by DEFENDANT performed manual tasks but were not paid the overtime wages to  
22 which they were entitled because of DEFENDANT's systematic policies and practices of failing  
23 to correctly record all time worked, including overtime worked. DEFENDANT failed to  
24 correctly pay overtime wages to PLAINTIFF and the other CALIFORNIA CLASS Members in  
25 accordance with California law, and thereby systematically underpaid overtime compensation to  
26 PLAINTIFF and the other CALIFORNIA CLASS Members for their documented time worked,  
27 including overtime worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS  
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1 Members worked more than eight (8) hours in a workday and/or forty (40) hours in a workweek  
2 but were not fully compensated for overtime worked as required by law.

3 9. Individuals in these positions are and were employees who are entitled to  
4 overtime compensation and prompt payment of amounts that the employer owes an employee  
5 when the employee quits or is terminated, and other compensation and working conditions that  
6 are prescribed by law. Although DEFENDANT required their employees to work more than  
7 eight (8) hours in a workday and/or forty (40) hours in a workweek from time to time, as a  
8 matter of company policy and practice, DEFENDANT denied these employees the correct  
9 overtime compensation that the law requires. PLAINTIFF and the CALIFORNIA CLASS  
10 Members work or worked in California and DEFENDANT's practices and procedures are and  
11 were common throughout California. As a result of their rigorous work schedules.

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

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

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

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

17         13. DEFENDANT as a matter of corporate policy, practice and procedure,  
18 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF  
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
21 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
22 are required to indemnify employees for all expenses incurred in the course and scope of their  
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or  
24 her employee for all necessary expenditures or losses incurred by the employee in direct  
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
27 believed them to be unlawful."  
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1           14. In the course of their employment, PLAINTIFF and other CALIFORNIA  
2 CLASS Members as a business expense, were required by DEFENDANT to use their own  
3 personal cellular phones as a result of and in furtherance of their job duties as employees for  
4 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
5 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
6 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
7 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
8 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
9 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not  
10 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
11 benefit of DEFENDANT.

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

23           16. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond  
24 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and  
25 former employees) have the right to inspect personnel records maintained by the employer  
26 "related to the employee's performance or to any grievance concerning the employee."  
27 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF  
28 requested his employment file via certified mail multiple times and DEFENDANT failed to

1 respond each time. As a result, PLAINTIFF is now entitled to a statutory penalty of \$750 and an  
2 award of attorneys' fees and costs for bringing this action.

3 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
4 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
5 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty  
6 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed  
7 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him  
8 from being relieved of all of his duties for the legally required off-duty meal periods. As a  
9 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is  
10 evidenced by DEFENDANT's business records. To date, DEFENDANT has yet to pay  
11 PLAINTIFF all of his overtime wages due to him and DEFENDANT has failed to pay any  
12 penalty wages owed to him under California Labor Code Section 203. The amount in  
13 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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

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

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

#### 25 **THE CALIFORNIA CLASS**

26 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
28 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all

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

6 21. 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 22. 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 willfully, 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 23. DEFENDANT has the burden of proof to make sure 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 24. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
26 CLASS Members is impracticable.

27 25. 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 California Unfair  
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
3 unfairly, and/or deceptively having in place a company policy, practice and  
4 procedure that uniformly denied PLAINTIFF and the members of the  
5 CALIFORNIA CLASS the correct overtime wages and split shift premiums and  
6 otherwise violated applicable law;
- 7 b. Committing an act of unfair competition in violation of the UCL, by failing to  
8 provide mandatory meal and/or rest breaks to PLAINTIFF and the  
9 CALIFORNIA CLASS members.

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

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

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

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

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

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

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the  
27 CALIFORNIA CLASS sought does not relate exclusively to restitution  
28 because through this claim PLAINTIFF seeks declaratory relief holding

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that the DEFENDANT’s policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may 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.

28. 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;

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

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

23 **THE CALIFORNIA LABOR SUB-CLASS**

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

1 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
2 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
3 (\$5,000,000.00).

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

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

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

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

- 26 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime  
27 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and  
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- 1 pay for missed meal and rest breaks in violation of the California Labor Code
- 2 and California regulations and the applicable California Wage Order;
- 3 b. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 4 conduct;
- 5 c. The proper measure of damages and penalties owed to the members of the
- 6 CALIFORNIA LABOR SUB-CLASS; and
- 7 d. Whether DEFENDANT's conduct was willful.

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

- 10 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 11 b. PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
- 12 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
- 13 Lab. Code § 1198;
- 14 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 15 and the other members of the CALIFORNIA CLASS with all legally required
- 16 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 17 rest breaks;
- 18 d. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
- 19 employee is discharged or quits from employment, the employer must pay the
- 20 employee all wages due without abatement, by failing to tender full payment
- 21 and/or restitution of wages owed or in the manner required by California law to
- 22 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
- 23 their employment.

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

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

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

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

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

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

27 a. Without class certification and determination of declaratory, injunctive, statutory  
28 and other legal questions within the class format, prosecution of separate actions



1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
2 the risk of:

- 3 i. Inconsistent or varying adjudications with respect to individual members  
4 of the CALIFORNIA LABOR SUB-CLASS which would establish  
5 incompatible standards of conduct for the parties opposing the  
6 CALIFORNIA LABOR SUB-CLASS; or
- 7 ii. Adjudication with respect to individual members of the CALIFORNIA  
8 LABOR SUB-CLASS which would as a practical matter be dispositive of  
9 interests of the other members not party to the adjudication or  
10 substantially impair or impede their ability to protect their interests.
- 11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
13 SUB-CLASS, making appropriate class-wide relief with respect to the  
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
15 uniformly fails to pay all wages due. Including the correct wages for all time  
16 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required  
17 by law;
- 18 c. Common questions of law and fact predominate as to the members of the  
19 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
20 violations of California Law as listed above, and predominate over any question  
21 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
22 Class Action is superior to other available methods for the fair and efficient  
23 adjudication of the controversy, including consideration of:
- 24 i. The interests of the members of the CALIFORNIA LABOR SUB-  
25 CLASS in individually controlling the prosecution or defense of separate  
26 actions in that the substantial expense of individual actions will be  
27 avoided to recover the relatively small amount of economic losses  
28 sustained by the individual CALIFORNIA LABOR SUB-CLASS

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Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA 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.

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

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

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
2 employed by DEFENDANT in California during the CALIFORNIA LABOR  
3 SUB-CLASS PERIOD; and

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

8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

15 40. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
16 Code § 17021.

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

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

1           42. By the conduct alleged herein, DEFENDANT has engaged and continues to  
2 engage in a business practice which violates California law, including but not limited to, the  
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
4 including Sections 204, 226.7, 510, 512, 1194, and 1198, for which this Court should issue  
5 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be  
6 necessary to prevent and remedy the conduct held to constitute unfair competition, including  
7 restitution of wages wrongfully withheld.

8           43. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
9 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
10 unscrupulous or substantially injurious to employees, and were without valid justification or  
11 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
12 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
13 withheld.

14           44. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
15 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
16 mandated meal and rest periods and the required amount of compensation for missed meal and  
17 rest periods, and failed to pay overtime correctly, due to a systematic business practice that  
18 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
19 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
20 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,  
21 including restitution of wages wrongfully withheld.

22           45. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
23 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
24 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
25 DEFENDANT.

26           46. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
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1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
2 required by Cal. Lab. Code §§ 226.7 and 512.

3 47. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty  
5 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
6 for each workday in which a second off-duty meal period was not timely provided for each ten  
7 (10) hours of work.

8 48. PLAINTIFF further demands on behalf of himself and on behalf of each  
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
10 was not timely provided as required by law.

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME COMPENSATION**

12 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

18 55. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
19 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
20 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
21 accurately calculate and pay overtime wages to PLAINTIFF and CALIFORNIA CLASS  
22 Members.

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

25 57. Cal. Lab. Code § 510 provides that employees in California shall not be employed  
26 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless  
27 they receive additional compensation beyond their regular wages in amounts specified by law.  
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1           58. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
2 including minimum and overtime compensation and interest thereon, together with the costs of  
3 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours  
4 than those fixed by the Industrial Welfare Commission is unlawful.

5           59. 57. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF  
6 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the  
7 correct amount of time they worked, including overtime work. As set forth herein,  
8 DEFENDANT’s uniform policy and practice was to unlawfully and intentionally deny timely  
9 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR  
10 SUB-CLASS.

11           60. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a  
13 result of implementing a uniform policy and practice that denied accurate compensation to the  
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
15 overtime pay.

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

22           62. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
24 receive the correct overtime compensation for their time worked for DEFENDANT.

25           63. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
26 from the overtime requirements of the law. None of these exemptions are applicable to  
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject



1 to a valid collective bargaining agreement that would preclude the causes of action contained  
2 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the  
3 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,  
4 non-waivable rights provided by the State of California.

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

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

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

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

27 68. In performing the acts and practices herein alleged in violation of California labor  
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

21 **Defendants)**

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code § 226)**

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

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

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

- 26 a. Gross wages earned,  
27 b. (2) total hours worked by the employee, except for any employee whose  
28 compensation is solely based on a salary and who is exempt from payment

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

16 80. When DEFENDANT did not accurately record PLAINTIFF's and other  
17 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.  
18 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing  
19 that properly and accurately itemizes all missed meal and rest periods and reporting time wages  
20 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and  
21 thereby also failed to set forth the correct wages earned by the employees. Additionally, the  
22 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS  
23 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list  
24 the correct name of the legal entity that was the employer of PLAINTIFF and the  
25 CALIFORNIA CLASS Members.

26 DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code §  
27 226, causing injury and damages to PLAINTIFF and the other members of the  
28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,

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

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES WHEN DUE**

13 **(Cal. Lab. Code § 203)**

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

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

19 82. Cal. Lab. Code § 200 provides that:

20 As used in this article:

- 21 (d) "Wages" includes all amounts for labor performed by employees of every  
22 description, whether the amount is fixed or ascertained by the standard of time,  
23 task, piece, Commission basis, or other method of calculation.
- 24 (e) "Labor" includes labor, work, or service whether rendered or performed under  
25 contract, subcontract, partnership, station plan, or other agreement if the to be  
26 paid for is performed personally by the person demanding payment.
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1           83.     Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges  
2 an employee, the wages earned and unpaid at the time of discharge are due and payable  
3 immediately.”

4           84.     Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

16           86.     Cal. Lab. Code § 203 provides:

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

22           87.     The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
23 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,  
24 to these employees who actually worked overtime, as required by law, and has not tendered  
25 payment of wages to these employees who missed meal and rest breaks, as required by law.

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

1 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS  
2 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory  
3 costs as allowed by law.

4 **SEVENTH CAUSE OF ACTION**

5 **FOR FAILURE TO PROVIDE PERSONNEL FILES**

6 **[Cal. Lab. Code § 1198.5]**

7 **(By Plaintiff Moreno and Against All Defendants)**

8 89. On April 12, 2019, Plaintiff Moreno’s counsel of record, as Plaintiff Moreno’s  
9 legal representative, caused a written request via certified mail to be delivered to DEFENDANT  
10 for Plaintiff Moreno’s personnel and employment records, including but not limited to (1) payroll  
11 records, (2) employment contracts; (3) itemized pay stubs, and (4) Plaintiff Moreno’s complete  
12 employment file, true and correct copies of which are attached hereto as Exhibit 1.

13 90. Defendant failed to provide and/or make available to Plaintiff Moreno his  
14 personnel records, payroll records, employment contracts, and entire employment file within thirty  
15 (30) days of all his requests stated above. In fact, as of the filing of this Complaint, Defendant still  
16 has not provided Plaintiff Moreno his personnel records, pay stubs, and employment file and  
17 DEFENDANT has failed to pay Plaintiff Moreno the statutory penalty in the amount of \$750.

18 91. DEFENDANT has violated Cal. Lab. Code Section 1198.5 by failing to respond  
19 and provide Plaintiff Moreno with his employment file. Section 1198.5 states that employees (and  
20 former employees) have the right to inspect personnel records maintained by the employer “related  
21 to the employee’s performance or to any grievance concerning the employee.” Employers must  
22 allow inspection or copying within thirty (30) days of the request. Plaintiff Moreno requested his  
23 employment file via certified mail and DEFENDANT failed to respond. As a result, Plaintiff  
24 Moreno is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code  
25 Section 1198.5, a statutory penalty of \$750, and an award of attorneys’ fees and costs for bringing  
26 this action.  
27  
28



1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

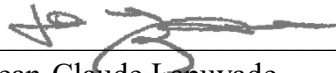
- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes  
17 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
18 pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20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

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- an award of costs for violation of Cal. Lab. Code § 226;
  - 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; and
  - f. Penalties pursuant to Cal. Lab. Code §1198.5.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
  - b. Such other and further relief as the Court deems just and equitable; and
  - c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: May 14, 2019

**JCL LAW FIRM, APC**

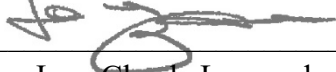
By:   
 Jean-Claude Lapuyade  
 Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: May 14, 2019

**JCL LAW FIRM, APC**

By:   
 Jean-Claude Lapuyade, Esq.  
 Attorney for PLAINTIFF

# **EXHIBIT 1**



Jean-Claude Lapuyade, Esq.  
jlapuyade@jcl-lawfirm.com

3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Tel: 619-599-8292  
Fax: 619-599-8291  
Toll Free: 1-888-498-6999  
[www.jcl-lawfirm.com](http://www.jcl-lawfirm.com)

Ben Greenberg, Of Counsel.  
bgreenberg@jcl-lawfirm.com

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April 12, 2019

DA KITCHEN, INC.  
c/o Anselmo S. Tolentino  
7524 Mesa College Drive  
San Diego, CA 92111  
***Certified U.S. Mail with Return Receipt No. 7018 3090 0000 5110 2007***

Re: JOHN P. MORENO  
Demand for Employee File Pursuant to Labor Code Sections 226, 432 and 1198.5

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To Whom It May Concern:

Please be advised that we have been retained by JOHN P. MORENO (“MORENO”) to investigate employment law violations. MORENO worked for your company in California. Please direct all future communications regarding this matter to our office.

This letter is written to request copies of all paystubs issued to MORENO during his tenure of employment with you. Additionally, we would like a copy of MORENO’s complete employment file, including all documents and arbitration agreements signed by MORENO and all background check disclosure and authorization forms.

Under California Labor Code Section 1198.5, an employer is required to allow an employee to inspect and receive a copy of his or her personnel records which related to the employee’s performance or to any grievance concerning the employee. The failure of an employer to permit an employee to review his or her personnel file is a misdemeanor per Labor Code Section 1199. Labor Code Section 432 also entitles an employee to receive copies of any signed documents related to the obtaining or holding of employment.

Additionally, California Labor Code Section 226(b) requires employers to make payroll records available to employees upon reasonable request. Labor Code Section 226(c) further requires that the employer comply with the request for records as soon as practicable, but no later than twenty-one (21) calendar days from the date of request. Finally, Labor Code Section 226(f) entitles employees to recover civil penalties of \$750 against an employer who violates these requirements.

This request is made on behalf of MORENO in accordance with California Labor Code §§ 226, and 1198.5, as well as the applicable Industrial Welfare Commission Wage Order, § 7(c).

Please provide the records within thirty (30) days from the date of this correspondence. We would be pleased to pay for any reasonable copy charges upon request.

Very truly yours,  
JCL LAW FIRM, APC

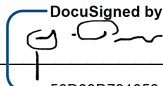
A handwritten signature in black ink, appearing to read 'Jean-Claude Lapuyade'.

Jean-Claude Lapuyade, Esq.

**AUTHORIZATION FOR RELEASE OF EMPLOYMENT RECORDS**

I, John Moreno, (“Client”), do hereby authorize DA KITCHEN, INC., (“Employer”) to release my entire employment file, including all pay statements, time cards issued to me, arbitration agreements signed by me, background disclosure and authorization forms signed by me, and all other documents signed by me from the date of my hire, to my attorneys at the JCL LAW FIRM, APC, located at 3990 OLD TOWN AVENUE, SUITE C204, SAN DIEGO, CA 92110.

Respectfully,

\_\_\_\_\_  
Client  56D89D7318534F4...

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DA Kitchen, INC.  
C/O Anscimo Talentino  
7524 Mesa College Dr.  
San Diego, CA 92111



9590 9402 4720 8344 8096 72

2. Article Number (Transfer from service label)

7018 3090 0000 5110 2007

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

Agent  
 Addressee

B. Received by (Printed Name)

JACOB CANTOLLAS

C. Date of Delivery

04/17/19

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

MORCNO 4-12-19

3. Service Type

- Adult Signature Restricted Delivery
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt