

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

ELG METALS, INC., a Pennsylvania Corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JAMES F. RACHAL JR., an individual, on behalf of himself and on behalf of all persons similarly situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**NOV 30 2020**

Shari R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):

Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

**20STCV45861**

CASE NUMBER:  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203

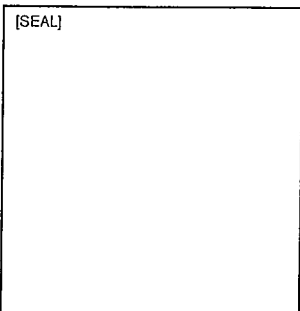
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

**Kristina Vargas**

DATE: **NOV 30 2020** **SHERRI R. CARTER**

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

VIA FAX

COPY

1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 5850 Oberlin Drive, Suite 230A  
San Diego, CA 92121  
3 Telephone: (619)255-9047; Facsimile: (858) 404-9203

4 **JCL LAW FIRM, APC**  
Jean-Claude Lapuyade (State Bar #248676)  
5 3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
6 Telephone: (619)599-8292; Facsimile: (619) 599-8291

7 Attorneys for Plaintiff

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

NOV 30 2020

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10  
11 JAMES F. RACHAL JR., an individual, on  
behalf of himself and on behalf of all persons  
12 similarly situated,

13 Plaintiff,

14 v.

15 ELG METALS, INC., a Pennsylvania  
Corporation; and DOES 1-50, Inclusive,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. **20STCV45861**

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197, AND 1197.1; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq*.

**DEMAND FOR A JURY TRIAL**

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant ELG METALS, INC. (“DEFENDANT”) is a Pennsylvania  
8 corporation and at all relevant times mentioned herein conducted and continues to conduct  
9 substantial and regular business throughout California.

10 2. DEFENDANT is in the business of trading, processing and recycling raw  
11 materials for the stainless steel industry and high performance materials.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
13 employee entitled to minimum wages, overtime pay and meal and rest periods from 2003 to  
14 March 2020. PLAINTIFF was at all times relevant mentioned herein classified by  
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and  
16 received additional compensation from DEFENDANT in the form of non-discretionary  
incentive wages.

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

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

1 deceptive business practice whereby DEFENDANT retained and continues to retain wages due  
2 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other  
3 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
4 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and  
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24 **THE CONDUCT**

25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
26 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to  
28 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the

1 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime  
2 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
3 forfeited wages due them for working overtime without compensation at the correct overtime  
4 rates. DEFENDANT's uniform policy and practice to not pay the members of the  
5 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with  
6 applicable law is evidenced by DEFENDANT's business records.

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

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

25 11. In violation of the applicable sections of the California Labor Code and the  
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
27 matter of company policy, practice and procedure, intentionally and knowingly failed to  
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct

1 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is  
2 intended to purposefully avoid the payment of the correct overtime compensation as required by  
3 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage  
4 over competitors who complied with the law. To the extent equitable tolling operates to toll  
5 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS  
6 PERIOD should be adjusted accordingly.

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

19 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and  
20 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
21 without being provided ten (10) minute rest periods. Further, these employees were denied their  
22 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
23 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of  
24 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)  
25 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other  
26 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.  
27 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS  
28

1 Members were periodically denied their proper rest periods by DEFENDANT and  
2 DEFENDANT's managers.

3 14. DEFENDANT as a matter of corporate policy, practice and procedure,  
4 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF  
5 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
6 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
7 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
8 are required to indemnify employees for all expenses incurred in the course and scope of their  
9 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or  
10 her employee for all necessary expenditures or losses incurred by the employee in direct  
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
12 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
13 believed them to be unlawful."

14 15. In the course of their employment, PLAINTIFF and other CALIFORNIA  
15 CLASS Members as a business expense, were required by DEFENDANT to use their own  
16 personal cellular phones as a result of and in furtherance of their job duties as employees for  
17 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
18 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
19 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
20 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
21 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
22 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not  
23 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
24 benefit of DEFENDANT.

25 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
26 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
27 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
28 CLASS with complete and accurate wage statements which failed to show, among other things,

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

11 17. Further, DEFENDANT violated Section 15 of Industrial Welfare Commission  
12 Wage Order No. 13-2001. Specifically, per Section 15, DEFENDANT failed to insure that “the  
13 temperature maintained in each work area shall provide reasonable comfort consistent with  
14 industry-wide standards for the nature of the process and the work performed” for Plaintiff and  
15 the other members of the CALIFORNIA CLASS. Further, per Section 15, DEFENDANT failed  
16 to prevent “excessive heat or humidity” [] created by the work process,” and failed to “take all  
17 feasible means to reduce such excessive heat or humidity to a degree providing reasonable  
18 comfort.”

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



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

3         19. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to  
4 him in the form of two components. One component of PLAINTIFF’S compensation was a base  
5 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary  
6 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain  
7 predefined performance requirements. PLAINTIFF met DEFENDANT’S predefined eligibility  
8 performance requirements in various pay periods throughout his employment with  
9 DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages. During these pay  
10 periods in which PLAINTIFF was paid the non-discretionary incentive wages by  
11 DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but DEFENDANT never  
12 included the incentive compensation in PLAINTIFF’S regular rate of pay for the purposes of  
13 calculating what should have been PLAINTIFF’S accurate overtime rate and thereby underpaid  
14 PLAINTIFF for overtime worked throughout her employment with DEFENDANT. The  
15 incentive compensation paid by DEFENDANT constituted wages within the meaning of the  
16 California Labor Code and thereby should have been part of PLAINTIFF’S “regular rate of  
17 pay.” PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and  
18 was not fully relieved of duty for his meal periods, resulting in off-the-clock work and unpaid  
19 minimum wages. PLAINTIFF was required to perform work as ordered by DEFENDANT for  
20 more than five (5) hours during a shift without receiving an off-duty meal break. Further,  
21 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday  
22 in which he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF  
23 therefore forfeited meal and rest breaks without additional compensation and in accordance with  
24 DEFENDANT’S strict corporate policy and practice. DEFENDANT also provided PLAINTIFF  
25 with a paystub that failed to accurately display PLAINTIFF’S correct rates of overtime pay and  
26 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code  
27 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation still  
28

1 owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in  
2 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

3 **JURISDICTION AND VENUE**

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

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

13 **THE CALIFORNIA CLASS**

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

23 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
25 accordingly.

26 24. The California Legislature has commanded that "all wages... ..earned by any  
27 person in any employment are due and payable twice during each calendar month, on days  
28 designated in advance by the employer as the regular paydays", and further that "[a]ny work in

1 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .  
2 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay  
3 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),  
4 however, is statutorily authorized to “establish exemptions from the requirement that an  
5 overtime rate of compensation be paid... ..for executive, administrative, and professional  
6 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the  
7 test of the exemption, [and] customarily and regularly exercises discretion and independent  
8 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the  
9 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS  
10 qualify for exemption from the above requirements.

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

19 26. DEFENDANT has the legal burden to establish that each and every  
20 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to  
21 accurately calculate the “regular rate of pay” by including the incentive compensation that  
22 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.  
23 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to  
24 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy  
25 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable  
26 overtime rate for all overtime worked, so as to satisfy their burden. This common business  
27 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a  
28 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions

1 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this  
2 claim.

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

10 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
11 CLASS Members is impracticable.

12 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
13 California law by:

- 14 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
15 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
16 company policies, practices and procedures that failed to pay all wages due the  
17 CALIFORNIA CLASS for all time worked, including overtime, and failed to  
18 accurately record the applicable rates of all overtime worked by the  
19 CALIFORNIA CLASS;
- 20 b. Committing an act of unfair competition in violation of the California Unfair  
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
22 unfairly, and/or deceptively having in place a company policy, practice and  
23 procedure that failed to correctly calculate overtime compensation due to  
24 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 25 c. Committing an act of unfair competition in violation of the California Unfair  
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
27 provide mandatory meal and/or rest breaks to PLAINTIFF and the  
28 CALIFORNIA CLASS members;

1 d. Committing an act of unfair competition in violation of the California Unfair  
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.  
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA  
4 CLASS members with necessary expenses incurred in the discharge of their job  
5 duties.

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

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

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

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

27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA CLASS, and has retained counsel who are

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

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

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their

1 legal rights out of fear of retaliation by DEFENDANT, which may  
2 adversely affect an individual's job with DEFENDANT or with a  
3 subsequent employer, the Class Action is the only means to assert their  
4 claims through a representative; and

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

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

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

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

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

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

26 e. There is a community of interest in obtaining appropriate legal and equitable  
27 relief for the acts of unfair competition, statutory violations and other  
28 improprieties, and in obtaining adequate compensation for the damages and



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

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

- 1           b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
- 2           to compensation for time worked, including overtime worked, under the overtime
- 3           pay requirements of California law;
- 4           c. Whether DEFENDANT failed to accurately record the applicable overtime rates
- 5           for all overtime worked PLAINTIFF and the other members of the
- 6           CALIFORNIA LABOR SUB-CLASS;
- 7           d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 8           the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 9           thirty (30) minute meal breaks and rest periods;
- 10          e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 11          the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 12          statements;
- 13          f. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 14          conduct;
- 15          g. The proper measure of damages and penalties owed to the members of the
- 16          CALIFORNIA LABOR SUB-CLASS; and
- 17          h. Whether DEFENDANT's conduct was willful.

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for all the time they work;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT’s practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIALABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

22           c. Common questions of law and fact predominate as to the members of the  
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
24 violations of California Law as listed above, and predominate over any question  
25 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
26 Class Action is superior to other available methods for the fair and efficient  
27 adjudication of the controversy, including consideration of:  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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:
  - 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

43. 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 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;



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

13  
14 **FIRST CAUSE OF ACTION**

15 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

21 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
22 Code § 17021.

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

27 Any person who engages, has engaged, or proposes to engage in unfair competition may  
28 be enjoined in any court of competent jurisdiction. The court may make such orders or  
judgments, including the appointment of a receiver, as may be necessary to prevent the  
use or employment by any person of any practice which constitutes unfair competition,

1 as defined in this chapter, or as may be necessary to restore to any person in interest any  
2 money or property, real or personal, which may have been acquired by means of such  
unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 47. By the conduct alleged herein, DEFENDANT has engaged and continues to  
4 engage in a business practice which violates California law, including but not limited to, the  
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
6 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
7 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
9 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

23           56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
24 and do, seek such relief as may be necessary to restore to them the money and property which  
25 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
27 unfair business practices, including earned but unpaid wages for all overtime worked.  
28

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

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

12 **SECOND CAUSE OF ACTION**

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

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

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

20 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
22 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
23 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other  
24 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly  
25 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,  
26 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in  
any workweek.

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

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

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

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

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

22           66. In committing these violations of the California Labor Code, DEFENDANT  
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the  
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
27 Industrial Welfare Commission requirements and other applicable laws and regulations.  
28

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

4           68. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
5 from the overtime requirements of the law. None of these exemptions are applicable to  
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further  
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject  
8 to a valid collective bargaining agreement that would preclude the causes of action contained  
9 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the  
10 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,  
11 non-waivable rights provided by the State of California.

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

15           70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
18 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
20 to accurately record and pay using the applicable overtime rate as evidenced by  
21 DEFENDANT's business records and witnessed by employees.

22           71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
23 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS for the true time they worked, PLAINTIFF and the other members of the  
25 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
26 injury in amounts which are presently unknown to them and which will be ascertained  
27 according to proof at trial.

28           72. DEFENDANT knew or should have known that PLAINTIFF and the other  
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,  
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
4 applicable overtime rate.

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

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

24 //

25 //

26 //

27 //

28

**THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

**(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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



**FOURTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REQUIRED REST PERIODS**

**(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

//

//

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**  
3 **(Cal. Lab. Code § 226)**

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

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

9 84. Cal. Labor Code § 226 provides that an employer must furnish employees within  
10 “accurate itemized” statement in writing showing:

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

3 **(Cal. Lab. Code §§ 2802)**

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

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

9 88. Cal. Lab. Code § 2802 provides, in relevant part, that:

10 An employer shall indemnify his or her employee for all necessary expenditures  
11 or losses incurred by the employee in direct consequence of the discharge of his  
12 or her duties, or of his or her obedience to the directions of the employer, even  
13 though unlawful, unless the employee, at the time of obeying the directions,  
14 believed them to be unlawful.

15 89. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
19 CLASS members for expenses which included, but were not limited to, costs related to using  
20 their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,  
21 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use  
22 their personal cell phones to respond to work related issues. DEFENDANT's uniform policy,  
23 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
24 CLASS members for expenses resulting from using their personal cellular phones for  
25 DEFENDANT within the course and scope of their employment for DEFENDANT. These  
26 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
27 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were  
28 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to  
2 do under the laws and regulations of California.

3 90. PLAINTIFF therefore demand reimbursement for expenditures or losses  
4 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
5 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
6 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

7  
8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

16 92. Cal. Lab. Code § 200 provides that:

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

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

26 94. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period quits his or her  
28 employment, his or her wages shall become due and payable not later than 72  
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 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

1 by mail if he or she so requests and designates a mailing address. The date of the  
2 mailing shall constitute the date of payment for purposes of the requirement to  
provide payment within 72 hours of the notice of quitting.

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

5 96. 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  
penalty from the due date thereof at the same rate until paid or until an action  
therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

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

21 **Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
22 **Defendants)**

23 99. 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  
25 of this Complaint.

26 100. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
28

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
3 Members.

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

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

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

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

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

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

27  
28

1           107. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
3 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

28



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

12 **NINTH 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)**

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

18 114. 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.

28 115. PLAINTIFF, and such persons that may be added from time to time who satisfy

1 the requirements and exhaust the administrative procedures under the Private Attorney General  
2 Act, bring this Representative Action on behalf of the State of California with respect to herself  
3 and all individuals who are or previously were employed by DEFENDANT and classified as  
4 non-exempt employees in California during the time period of September 18, 2019 until the  
5 present (the "AGGRIEVED EMPLOYEES").

6 116. On September 18, 2020 PLAINTIFF gave written notice by certified mail to the  
7 Labor and Workforce Development Agency (the "Agency") and the employer of the  
8 specific provisions of this code alleged to have been violated as required by Labor Code §  
9 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The  
10 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.  
11 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil  
12 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect  
13 to all AGGRIEVED EMPLOYEES as herein defined.

14 117. The policies, acts and practices heretofore described were and are an unlawful  
15 business act or practice because Defendant (a) failed to pay PLAINTIFF and other  
16 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide  
17 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)  
18 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and  
19 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay  
20 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,  
21 including but not limited to Labor Code §§ §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,  
22 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and  
23 applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct.  
24 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private  
25 Attorney General Act of 2004 as the representative of the State of California for the illegal  
26 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27 118. Some or all of the conduct and violations alleged herein occurred during the  
28 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not

1 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations  
2 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30  
3 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.  
4 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one  
5 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code  
6 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

7  
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

- 23 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth  
24 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
25 action pursuant to Cal. Code of Civ. Proc. § 382;  
26 b. Compensatory damages, according to proof at trial, including compensatory  
27 damages for minimum wages, overtime compensation, and unreimbursed  
28 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
  - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
  - e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit; and,
  - f. 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: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

//  
  
//  
  
//  
  
//  
  
//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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, §1194 and/or §2802.

DATED: November 22, 2020

**ZAKAY LAW GROUP, APLC**

By:   
Shani G. Zakay  
Attorney for Plaintiff

**DEMAND FOR A JURY TRIAL**

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

DATED: November 22, 2020

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**



## ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

September 18, 2020

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
PAGA@dir.ca.gov

***Via Online Submission***

**ELG METALS, INC.**  
c/o CSC Lawyers Incorporating Service  
2710 Gateway Oaks Drive  
Suite 150N  
Sacramento, CA 95833

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents JAMES F. RACHAL JR. (“Plaintiff”) and other aggrieved employees in an action against ELG METALS, INC., (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from 2003 to March 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Defendant also failed to insure that “the temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed” for Plaintiff and the other Aggrieved Employees. Further, Defendant failed to prevent “excessive heat or humidity” [] created by the work process,” and failed to “take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.”

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Defendant also failed to provide Plaintiff and similarly situated aggrieved employees with complete wage statements that included the address of Defendant. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial

Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached proposed Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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.

Respectfully,



Shani O. Zakay  
Attorney at Law



1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 5850 Oberlin Drive, Suite 230A  
San Diego, CA 92121  
3 Telephone: (619)255-9047; Facsimile: (858) 404-9203

4 **JCL LAW FIRM, APC**  
Jean-Claude Lapuyade (State Bar #248676)  
5 3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
6 Telephone: (619)599-8292; Facsimile: (619) 599-8291

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10  
11 JAMES F. RACHAL JR., an individual, on  
behalf of himself and on behalf of all persons  
12 similarly situated,

13 Plaintiff,

14 v.

15 ELG METALS, INC., a Pennsylvania  
Corporation; and DOES 1-50, Inclusive,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 3) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197, AND 1197.1; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq*.

**DEMAND FOR A JURY TRIAL**

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant ELG METALS, INC. (“DEFENDANT”) is a Pennsylvania  
8 corporation and at all relevant times mentioned herein conducted and continues to conduct  
9 substantial and regular business throughout California.

10 2. DEFENDANT is in the business of trading, processing and recycling raw  
11 materials for the stainless steel industry and high performance materials.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
13 employee entitled to minimum wages, overtime pay and meal and rest periods from 2003 to  
14 March 2020. PLAINTIFF was at all times relevant mentioned herein classified by  
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and  
16 received additional compensation from DEFENDANT in the form of non-discretionary  
incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
18 defined as all individuals who are or previously were employed by DEFENDANT in California  
19 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the  
20 period beginning April 6, 2016 and ending on the date as determined by the Court (the  
21 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of  
22 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

23 **THE CONDUCT**

24 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
25 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
26 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to  
27 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the  
28 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime

1 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
2 forfeited wages due them for working overtime without compensation at the correct overtime  
3 rates. DEFENDANT's uniform policy and practice to not pay the members of the  
4 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with  
5 applicable law is evidenced by DEFENDANT's business records.

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

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

24 11. In violation of the applicable sections of the California Labor Code and the  
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
26 matter of company policy, practice and procedure, intentionally and knowingly failed to  
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct  
28 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is

1 intended to purposefully avoid the payment of the correct overtime compensation as required by  
2 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage  
3 over competitors who complied with the law. To the extent equitable tolling operates to toll  
4 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS  
5 PERIOD should be adjusted accordingly.

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

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

1           14.     DEFENDANT as a matter of corporate policy, practice and procedure,  
2 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF  
3 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
4 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
5 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
6 are required to indemnify employees for all expenses incurred in the course and scope of their  
7 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or  
8 her employee for all necessary expenditures or losses incurred by the employee in direct  
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
11 believed them to be unlawful."

12           15.     In the course of their employment, PLAINTIFF and other CALIFORNIA  
13 CLASS Members as a business expense, were required by DEFENDANT to use their own  
14 personal cellular phones as a result of and in furtherance of their job duties as employees for  
15 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
16 associated with the use of their personal cellular phones for DEFENDANT's benefit.  
17 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
18 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
19 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
20 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not  
21 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
22 benefit of DEFENDANT.

23           16.     When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
24 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
25 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
26 CLASS with complete and accurate wage statements which failed to show, among other things,  
27 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)  
28 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments

1 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall  
2 furnish each of his or her employees with an accurate itemized wage statement in writing  
3 showing, among other things, gross wages earned and all applicable hourly rates in effect during  
4 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from  
5 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an  
6 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
7 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of  
8 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

9 17. Further, DEFENDANT violated Section 15 of Industrial Welfare Commission  
10 Wage Order No. 13-2001. Specifically, per Section 15, DEFENDANT failed to insure that “the  
11 temperature maintained in each work area shall provide reasonable comfort consistent with  
12 industry-wide standards for the nature of the process and the work performed” for Plaintiff and  
13 the other members of the CALIFORNIA CLASS. Further, per Section 15, DEFENDANT failed  
14 to prevent “excessive heat or humidity” [] created by the work process,” and failed to “take all  
15 feasible means to reduce such excessive heat or humidity to a degree providing reasonable  
16 comfort.”

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

28

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

28 **JURISDICTION AND VENUE**



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

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

10   **THE CALIFORNIA CLASS**

11           22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
13 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
14 individuals who are or previously were employed by DEFENDANT in California and classified  
15 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period  
16 beginning April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA  
17 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA  
18 CLASS Members is under five million dollars (\$5,000,000.00).

19           23. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
21 accordingly.

22           24. The California Legislature has commanded that "all wages... ..earned by any  
23 person in any employment are due and payable twice during each calendar month, on days  
24 designated in advance by the employer as the regular paydays", and further that "[a]ny work in  
25 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .  
26 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay  
27 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),  
28 however, is statutorily authorized to "establish exemptions from the requirement that an

1 overtime rate of compensation be paid... ...for executive, administrative, and professional  
2 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the  
3 test of the exemption, [and] customarily and regularly exercises discretion and independent  
4 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the  
5 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS  
6 qualify for exemption from the above requirements.

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

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

27 27. At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
28 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the

1 employee for all overtime worked at the applicable rate, as required by California Labor Code  
2 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the  
3 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so  
4 as to include all earnings in the overtime compensation calculation as required by California  
5 Labor Code §§ 510, *et seq.*

6 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
7 CLASS Members is impracticable.

8 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
9 California law by:

- 10 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
11 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
12 company policies, practices and procedures that failed to pay all wages due the  
13 CALIFORNIA CLASS for all time worked, including overtime, and failed to  
14 accurately record the applicable rates of all overtime worked by the  
15 CALIFORNIA CLASS;
- 16 b. Committing an act of unfair competition in violation of the California Unfair  
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
18 unfairly, and/or deceptively having in place a company policy, practice and  
19 procedure that failed to correctly calculate overtime compensation due to  
20 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 21 c. Committing an act of unfair competition in violation of the California Unfair  
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
23 provide mandatory meal and/or rest breaks to PLAINTIFF and the  
24 CALIFORNIA CLASS members;
- 25 d. Committing an act of unfair competition in violation of the California Unfair  
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.  
27 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA  
28

1 CLASS members with necessary expenses incurred in the discharge of their job  
2 duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
20 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
21 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR  
22 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as  
23 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to  
24 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of  
25 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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



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

10         36. 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 any additional job titles of similarly situated employees when they have been  
15 identified.

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

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

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

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

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

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

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

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

3 b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay  
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for  
5 all the time they work;

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

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

15 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
16 CALIFORNIA CLASS members with necessary expenses incurred in the  
17 discharge of their job duties; and

18 f. 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 41. 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  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT’s practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIALABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

42. 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:

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

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

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

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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 classified  
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
3 PERIOD; and

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

8  
9  
10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

17 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
18 Code § 17021.

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

23 Any person who engages, has engaged, or proposes to engage in unfair competition may  
24 be enjoined in any court of competent jurisdiction. The court may make such orders or  
25 judgments, including the appointment of a receiver, as may be necessary to prevent the  
26 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).

27 47. By the conduct alleged herein, DEFENDANT has engaged and continues to  
28 engage in a business practice which violates California law, including but not limited to, the



1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
2 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
3 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
4 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
5 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

25 51. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
26 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
27 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.  
28

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

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

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

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

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

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

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

8 //

9 //

10  
11 **SECOND CAUSE OF ACTION**

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

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

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

19 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
20 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
21 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
22 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other  
23 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly  
24 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,  
25 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in  
any workweek.

26 61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
27 public policy, an employer must timely pay its employees for all hours worked.  
28

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

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

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

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

22           66. In committing these violations of the California Labor Code, DEFENDANT  
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the  
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
27 Industrial Welfare Commission requirements and other applicable laws and regulations.  
28

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

4           68. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
5 from the overtime requirements of the law. None of these exemptions are applicable to  
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further  
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject  
8 to a valid collective bargaining agreement that would preclude the causes of action contained  
9 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the  
10 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,  
11 non-waivable rights provided by the State of California.

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

15           70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
18 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
20 to accurately record and pay using the applicable overtime rate as evidenced by  
21 DEFENDANT's business records and witnessed by employees.

22           71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
23 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
24 CLASS for the true time they worked, PLAINTIFF and the other members of the  
25 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
26 injury in amounts which are presently unknown to them and which will be ascertained  
27 according to proof at trial.

28           72. DEFENDANT knew or should have known that PLAINTIFF and the other  
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,  
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
4 applicable overtime rate.

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

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

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**  
26 **(Cal. Lab. Code §§ 226.7 & 512)**

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



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

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

26 **(Cal. Lab. Code § 226)**

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



1           83.     PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
3 paragraphs of this Complaint.

4           84.     Cal. Labor Code § 226 provides that an employer must furnish employees within  
5 “accurate itemized” statement in writing showing:

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

24           85.     When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
25 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
26 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS with complete and accurate wage statements which failed to show, among other things,  
28 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)

1 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments  
2 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall  
3 furnish each of his or her employees with an accurate itemized wage statement in writing  
4 showing, among other things, gross wages earned and all applicable hourly rates in effect during  
5 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the  
6 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an  
7 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
8 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of  
9 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

21  
22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

24 **(Cal. Lab. Code §§ 2802)**

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

1 87. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
3 paragraphs of this Complaint.

4 88. Cal. Lab. Code § 2802 provides, in relevant part, that:

5 An employer shall indemnify his or her employee for all necessary expenditures  
6 or losses incurred by the employee in direct consequence of the discharge of his  
7 or her duties, or of his or her obedience to the directions of the employer, even  
8 though unlawful, unless the employee, at the time of obeying the directions,  
9 believed them to be unlawful.

10 89. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
11 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
12 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
13 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
14 CLASS members for expenses which included, but were not limited to, costs related to using  
15 their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,  
16 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use  
17 their personal cell phones to respond to work related issues. DEFENDANT's uniform policy,  
18 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
19 CLASS members for expenses resulting from using their personal cellular phones for  
20 DEFENDANT within the course and scope of their employment for DEFENDANT. These  
21 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
22 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were  
23 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
24 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the  
25 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to  
26 do under the laws and regulations of California.

27 90. PLAINTIFF therefore demand reimbursement for expenditures or losses  
28 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1  
2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN DUE**

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

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

7 91. 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 92. Cal. Lab. Code § 200 provides that:

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

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

20 94. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

96. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in  
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee

1 who is discharged or who quits, the wages of the employee shall continue as a  
2 penalty from the due date thereof at the same rate until paid or until an action  
therefor is commenced; but the wages shall not continue for more than 30 days.

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

6 98. 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 demands 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 demands an accounting and payment of all wages due, plus interest and statutory  
11 costs as allowed by law.

12 //

13 //

14 //

15 //

16 //  
17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

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

20 **Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
21 **Defendants)**

22  
23 99. 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  
25 of this Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **NINTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code §§ 2698 et seq.]**

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

12 113. PLAINTIFF realleges and incorporate by this reference, as though fully set forth  
13 herein, the prior paragraphs of this Complaint.

14 114. PAGA is a mechanism by which the State of California itself can enforce state  
15 labor laws through the employee suing under the PAGA who does so as the proxy or agent of  
16 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
17 fundamentally a law enforcement action designed to protect the public and not to benefit private  
18 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a  
19 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In  
20 enacting PAGA, the California Legislature specified that "it was ... in the public interest to  
21 allow aggrieved employees, acting as private attorneys general to recover civil penalties for  
22 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be  
23 subject to arbitration.

24 115. PLAINTIFF, and such persons that may be added from time to time who satisfy  
25 the requirements and exhaust the administrative procedures under the Private Attorney General  
26 Act, bring this Representative Action on behalf of the State of California with respect to herself  
27 and all individuals who are or previously were employed by DEFENDANT and classified as  
28 non-exempt employees in California during the time period of [REDACTED] until the present



1 (the "AGGRIEVED EMPLOYEES").

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

10 117. The policies, acts and practices heretofore described were and are an unlawful  
11 business act or practice because Defendant (a) failed to pay PLAINTIFF and other  
12 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide  
13 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)  
14 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and  
15 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay  
16 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,  
17 including but not limited to Labor Code §§ §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,  
18 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and  
19 applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct.  
20 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private  
21 Attorney General Act of 2004 as the representative of the State of California for the illegal  
22 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

23 118. Some or all of the conduct and violations alleged herein occurred during the  
24 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not  
25 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations  
26 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30  
27 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.  
28 App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one

1 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code  
2 violations committed by that employer.”], Emphasis added, reh’g denied (June 13, 2018.)

3  
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth  
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
21 action pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory  
23 damages for minimum wages, overtime compensation, and unreimbursed  
24 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR  
25 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS  
26 PERIOD plus interest thereon at the statutory rate;
- 27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
28 the applicable IWC Wage Order;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
  - e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit; and,
  - f. 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: 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, §1194 and/or §2802.

DATED: September \_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR A JURY TRIAL**

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

DATED: September \_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiff

**EXHIBIT 1**