

**SUMMONS  
(CITACION JUDICIAL)**

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

SECURE NURSING SERVICE, INC., a California Corporation; and  
DOES 1-50, Inclusive,

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

CHARLES P. SANDLIN III, 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

**JUL 07 2020**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Isaac Lovo, 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

CASE NUMBER:  
(Número del caso)  
**20STCV25675**

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

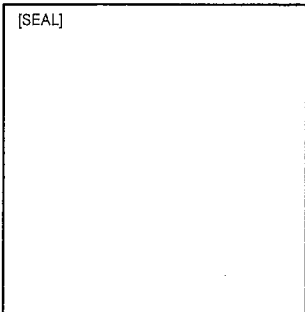
VIA FAX

DATE: **JUL 07 2020**  
(Fecha)

**SHERRI R. CARTER**

Clerk, by Isaac Lovo, 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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:
 

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 3990 Old Town Avenue, Suite C204  
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3 Telephone: (619)255-9047;  
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4 **JCL LAW FIRM, APC**  
5 Jean-Claude Lapuyade (State Bar #248676)  
3990 Old Town Avenue, Suite C204  
6 San Diego, CA 92110  
7 Telephone: (619)599-8292;  
Facsimile: (619) 599-8291

8 Attorneys for Plaintiff

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

11 CHARLES P. SANDLIN III, an individual, on  
12 behalf of himself and on behalf of all persons  
13 similarly situated,

14 Plaintiff,

15 v.

16 SECURE NURSING SERVICE, INC., a  
California Corporation; and DOES 1-50,  
17 Inclusive,

18 Defendants.

Case No: **20STCV25675**  
**CLASS ACTION COMPLAINT FOR:**  
1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;  
2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;  
3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;  
4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;  
5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;  
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;  
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203  
**DEMAND FOR A JURY TRIAL**

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

**JUL 07 2020**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Isaac Lovo, Deputy

VIA FAX

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant SECURE NURSING SERVICE, INC. (“Defendant” or  
7 “DEFENDANT”) is a California Corporation and at all relevant times mentioned herein  
8 conducted and continues to conduct substantial and regular business in California.

9 2. DEFENDANT, provides medical staffing solutions. The company specializes in  
10 the placement of travel Registered Nurses, Licensed Vocational Nurses, Certified Nurse  
11 Assistants and Allied Healthcare Professionals to hospitals throughout California.

12 3. PLAINTIFF was employed by DEFENDANT in California and was placed by  
13 DEFENDANT at various hospitals in Los Angeles County, California. PLAINTIFF was  
14 classified as a non-exempt employee entitled to overtime pay and meal and rest periods from  
15 2015 to December 2018. PLAINTIFF was at all times relevant mentioned herein classified by  
16 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and  
17 received additional compensation from DEFENDANT in the form of non-discretionary  
18 incentive wages.

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

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

1 business practice whereby DEFENDANT retained and continues to retain wages due to  
2 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. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
26 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
27 worked, meaning the time during which an employee is subject to the control of an employer,  
28 including all the time the employee is suffered or permitted to work. From time to time,

1 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without  
2 paying them for all the time they were under DEFENDANT'S control. Specifically,  
3 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be  
4 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended.  
5 PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were  
6 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF  
7 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and  
8 overtime compensation by working without their time being accurately recorded and without  
9 compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform  
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all  
11 time worked is evidenced by DEFENDANT'S business records.

12 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
13 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
14 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally  
15 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF  
16 and other members of the CALIFORNIA CLASS in order to avoid paying these employees the  
17 correct compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA  
18 CLASS forfeited wages due them for working without compensation at the correct rates.  
19 DEFENDANT's uniform policy and practice to not pay the members of the CALIFORNIA  
20 CLASS the correct minimum and overtime wages for all time worked in accordance with  
21 applicable law is evidenced by DEFENDANT's business records.

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

26 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
27 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANT. The non-discretionary incentive program provided all  
2 employees paid on an hourly basis with incentive compensation when the employees met the  
3 various performance goals set by DEFENDANT. However, when calculating the regular rate of  
4 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
5 DEFENDANT failed to include the incentive compensation as part of the employees' "regular  
6 rate of pay" for purposes of calculating overtime pay. Management and supervisors described  
7 the incentive program to potential and new employees as part of the compensation package. As  
8 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
9 CLASS Members must be included in the "regular rate of pay." The failure to do so has  
10 resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other  
11 CALIFORNIA CLASS Members by DEFENDANT. Additionally, Pursuant to the Industrial  
12 Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and  
13 CALIFORNIA CLASS Members for all their time worked, meaning the time during which an  
14 employee is subject to the control of an employer, including all the time the employee is  
15 suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA  
16 CLASS Members to work without paying them for all the time they were under  
17 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while  
18 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF  
19 was from time to time interrupted by work assignments. As a result, the PLAINTIFF and other  
20 CALIFORNIA CLASS Members forfeited overtime compensation by working without their  
21 time being accurately recorded and without compensation at the applicable overtime rates.  
22 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA  
23 CLASS Members for all time worked is evidenced by DEFENDANT's business records

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

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

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

18 14. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or  
19 her employees with an accurate itemized wage statement in writing showing, among other  
20 things, gross wages earned and all applicable hourly rates in effect during the pay period and the  
21 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT  
22 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct  
23 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to  
24 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
25 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
27 Code § 226.

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

12           16. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to  
13 him in the form of two components. One component of PLAINTIFF's compensation was a base  
14 hourly wage. The second component of PLAINTIFF's compensation was a non-discretionary  
15 incentive wage, including per-diem compensation. DEFENDANT paid the incentive wages, so  
16 long as PLAINTIFF met certain predefined performance requirements. PLAINTIFF met  
17 DEFENDANT's predefined eligibility performance requirements in various pay periods  
18 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the  
19 incentive wages. During these pay periods in which PLAINTIFF was paid the non-  
20 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for  
21 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF's  
22 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's  
23 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her  
24 employment with DEFENDANT. The incentive compensation paid by DEFENDANT  
25 constituted wages within the meaning of the California Labor Code and thereby should have  
26 been part of PLAINTIFF's "regular rate of pay." As a result of the rigorous work schedule  
27 imposed by DEFENDANT, PLAINTIFF was also from time to time unable to take off duty  
28 meal and rest breaks and was not fully relieved of duty for her meal and rest periods.



1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was  
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited  
5 meal and rest breaks without additional compensation and in accordance with DEFENDANT's  
6 strict corporate policy and practice. When PLAINTIFF worked overtime in the same pay period  
7 he earned incentive wages and/or missed meal and rest breaks, DEFENDANT also provided  
8 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of  
9 overtime pay for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,  
10 DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to her or  
11 any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for  
12 PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

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

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

23 **THE CALIFORNIA CLASS**

24 19. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
27 individuals who are or previously were employed by Defendant in California and classified as  
28 non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and

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

4 20. On April 6, 2020, due to the impact of the COVID-19 pandemic on California’s  
5 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which  
6 states that, “Notwithstanding any other law, the statutes of limitation for civil causes of action  
7 are tolled from April 6, 2020, until 90 days after the Governor declare that the state of  
8 emergency related COVID-19 pandemic is lifted.”

9 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
10 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
11 accordingly.

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

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

1 for time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even  
2 though DEFENDANT enjoyed the benefit of this work, required employees to perform this  
3 work and permitted or suffered to permit this overtime work.

4 24. DEFENDANT have the legal burden to establish that each and every  
5 CALIFORNIA CLASS Member is paid for all time worked. DEFENDANT, however, as a  
6 matter of uniform and systematic policy and procedure failed to have in place during the  
7 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure  
8 that each and every CALIFORNIA CLASS Member is paid for all time worked, so as to satisfy  
9 their burden. This common business practice applicable to each and every CALIFORNIA  
10 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive  
11 under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages,  
12 and reliance are not elements of this claim.

13 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
14 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
15 employee for all time worked at the applicable rate, as required by California Labor Code §§  
16 204 and 510, *et seq.*

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

19 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
20 California law by:

21 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
22 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
23 company policies, practices and procedures that failed to pay all minimum and  
24 overtime wages due the CALIFORNIA CLASS for all time worked, and failed to  
25 accurately record the applicable rates of all overtime worked by the  
26 CALIFORNIA CLASS.

27 b. Committing an act of unfair competition in violation of the California Unfair  
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,

1           unfairly, and/or deceptively having in place a company policy, practice and  
2           procedure that failed to correctly compensation due to PLAINTIFF and the  
3           members of the CALIFORNIA CLASS; and

4           c. Committing an act of unfair competition in violation of the California Unfair  
5           Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
6           provide mandatory meal and rest breaks to PLAINTIFF and the CALIFORNIA  
7           CLASS members;

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

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

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

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

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

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

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

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

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

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

27 i. With respect to the First Cause of Action, the final relief on behalf of the  
28 CALIFORNIA CLASS sought does not relate exclusively to restitution

1 because through this claim PLAINTIFF seek declaratory relief holding  
2 that the DEFENDANT's policy and practices constitute unfair  
3 competition, along with declaratory relief, injunctive relief, and incidental  
4 equitable relief as may be necessary to prevent and remedy the conduct  
5 declared to constitute unfair competition;

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

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

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

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

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

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

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

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

- 14                  a. The questions of law and fact common to the CALIFORNIA CLASS  
15                  predominate over any question affecting only individual CALIFORNIA CLASS  
16                  Members because the DEFENDANT's employment practices are uniform and  
17                  systematically applied with respect to the CALIFORNIA CLASS.
- 18                  b. A Class Action is superior to any other available method for the fair and efficient  
19                  adjudication of the claims of the members of the CALIFORNIA CLASS because  
20                  in the context of employment litigation a substantial number of individual  
21                  CALIFORNIA CLASS Members will avoid asserting their rights individually  
22                  out of fear of retaliation or adverse impact on their employment;
- 23                  c. The members of the CALIFORNIA CLASS are so numerous that it is  
24                  impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 25                  d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
26                  obtain effective and economic legal redress unless the action is maintained as a  
27                  Class Action;

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

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

23 **THE CALIFORNIA LABOR SUB-CLASS**

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



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

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

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

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

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

- 26 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime  
27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in  
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1 violation of the California Labor Code and California regulations and the  
2 applicable California Wage Order;

3 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled  
4 to overtime compensation for overtime worked under the overtime pay  
5 requirements of California law;

6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
7 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
8 thirty (30) minute meal breaks and rest periods;

9 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
10 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
11 statements;

12 e. Whether DEFENDANT has engaged in unfair competition by the above-listed  
13 conduct;

14 f. The proper measure of damages and penalties owed to the members of the  
15 CALIFORNIA LABOR SUB-CLASS; and

16 g. Whether DEFENDANT's conduct was willful.

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

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

27 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

1 the correct minimum wage pay for which DEFENDANT is liable pursuant to  
2 Cal. Lab. Code §§ 1194 and 1197;

3 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay  
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the  
5 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.  
6 Code § 1194 & § 1198;

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

11 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
13 statement in writing showing time worked at by the employee;

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

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

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

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

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

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

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

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
  - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

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

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

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



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

7           47. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
8 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and  
9 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime  
10 worked, and failed to provide the required amount of overtime compensation, pursuant to the  
11 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
12 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
13 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
14 withheld.

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

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

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

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

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

11 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
12 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
13 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
14 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
15 Members.

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

18 60. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
19 commission is the minimum wage to be paid to employees, and the payment of a wage less than  
20 the minimum so fixed is unlawful.

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

23 62. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
24 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
25 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice  
26 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the  
27 other members of the CALIFORNIA LABOR SUB-CLASS.

28 63. DEFENDANT'S uniform pattern of unlawful wage and hour practices  
manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a

1 whole, as a result of implementing a uniform policy and practice that denies accurate  
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS in regards to minimum wage pay.

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

10 65. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,  
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
12 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

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

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

23 71. 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 72. 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  
properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime

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

3 73. 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 74. Cal. Lab. Code § 510 further provides that employees in California shall not be  
6 employed more than eight (8) hours per workday and/or more than forty (40) hours per  
7 workweek unless they receive additional compensation beyond their regular wages in amount  
8 specified by law.

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

13 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for  
15 DEFENDANT and were not paid for all the time they worked, including overtime work.

16 77. 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 failed to accurately record overtime  
19 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,  
20 and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA  
21 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight  
22 (8) hours in a workday and/or forty (40) hours in any workweek.

23 78. In committing these violations of the California Labor Code, DEFENDANT acted  
24 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
25 the California Labor Code, the Industrial Welfare Commission requirements and other  
26 applicable laws and regulations.

27 79. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
receive full compensation for all overtime worked.

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

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

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
2 applicable overtime rate.

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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



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

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

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

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**FIFTH 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)**

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91. 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.

92. 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 DEFENDANTS and DEFENDANTS' managers.

93. DEFENDANTS 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.

94. 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.

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**SIXTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

**(Cal. Lab. Code § 226)**

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

95. 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.

96. Cal. Labor Code § 226 provides that an employer must furnish employees withan “accurate itemized” statement in writing showing:

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

1           97.     When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all  
2 wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate  
4 wage statements which failed to show, among other things, the correct time worked, including,  
5 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any  
6 workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code §  
7 226 provides that every employer shall furnish each of his or her employees with an accurate  
8 itemized wage statement in writing showing, among other things, gross wages earned and all  
9 applicable hourly rates in effect during the pay period and the corresponding amount of time  
10 worked at each hourly rate. Aside from the violations listed above in this paragraph,  
11 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the  
12 requirements under California Labor Code 226 *et seq.* As a result, from time to time  
13 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with  
14 wage statements which violated Cal. Lab. Code § 226.

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

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SEVENTH CAUSE OF ACTION

**FAILURE TO PAY WAGES WHEN DUE**

**(Cal. Lab. Code §§201, 202, 203)**

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

99. 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.

100. Cal. Lab. Code § 200 provides that:

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

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

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

If an employee not having a written contract for a definite period quits his or her 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 by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

104. 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 who is discharged or who quits, the wages of the employee shall continue as a

1 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.

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

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

11  
12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes  
28 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action

1 pursuant to Cal. Code of Civ. Proc. § 382;

2 b. Compensatory damages, according to proof at trial, including compensatory  
3 damages for minimum wages and overtime compensation due PLAINTIFF and  
4 the other members of the CALIFORNIA LABOR SUB-CLASS, during the  
5 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at  
6 the statutory rate;

7 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
8 the applicable IWC Wage Order;

9 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
10 which a violation occurs and one hundred dollars (\$100) per member of the  
11 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
13 an award of costs for violation of Cal. Lab. Code § 226; and

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

17 3. On all claims:

18 a. An award of interest, including prejudgment interest at the legal rate;

19 b. Such other and further relief as the Court deems just and equitable; and

20 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the  
21 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194  
22 and/or §2802.

23 DATED: June 30, 2020

24  
25 **ZAKAY LAW GROUP, APLC**

26 By: 

27 Shani O. Zakay  
28 Attorney for Plaintiff

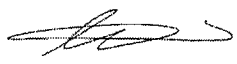
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**DEMAND FOR A JURY TRIAL**

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

DATED: June 30, 2020

**ZAKAY LAW GROUP, APLC**

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