

**SUMMONS
(CITACION JUDICIAL)**

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

EDNET CAREER INSTITUTE, a California Corporation (dba Hamilton Private Security); and DOES 1-50, Inclusive,

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

MICHAEL ANDREWS, 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

AUG 06 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, 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), 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), the California Courts Online Self-Help Center (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/), 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), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

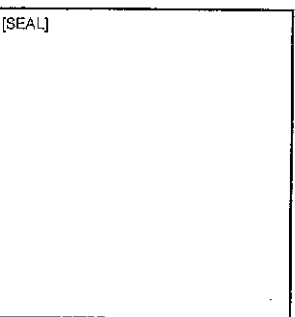
The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court, Stanely Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER
(Número del Caso) **20STCV29673**

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):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: **AUG 06 2020** **Sherri R. Carter, Clerk** Clerk, by **STEVEN DREW**, Deputy
(Fecha) (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):

VIA FAX

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5850 Oberlin Drive, Ste. 230A

San Diego, CA 92121

Telephone: (619)892-7095

Facsimile: (858) 404-9203

Website: www.zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

Website: www.jcl-lawfirm.com

Attorneys for Plaintiff

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

MICHAEL ANDREWS, an individual on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

EDNET CAREER INSTITUTE, a California
Corporation (dba Hamilton Private Security);
and DOES 1-50, Inclusive,

Defendants.

Case No: **20STCV29673**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

AUG 06 2020

Sherril R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

VIA FAX

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant EDNET CAREER INSTITUTE, a California Corporation (dba
6 Hamilton Private Security) (“DEFENDANT”) is a California Corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial and regular business
8 throughout California.

9 2. DEFENDANT is a full service provider of security services.

10 3. PLAINTIFF was employed by DEFENDANT in California from July 2016 to
11 October 2019 as a Security Guard and was at all times classified by DEFENDANT as a non-
12 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
13 periods.

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

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

1 who have been economically injured by DEFENDANT’S past and current unlawful conduct,
2 and all other appropriate legal and equitable relief.

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

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

20 **THE CONDUCT**

21 8. PLAINTIFF’S Security Guard position was a non-exempt position and was in
22 fact classified as non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA
23 CLASS Members employed by DEFENDANT performed manual tasks but were not paid the
24 overtime wages to which they were entitled because of DEFENDANT’S systematic policies and
25 practices of failing to correctly record all time worked, including overtime worked.
26 DEFENDANT failed to correctly pay overtime wages to PLAINTIFF and the other
27 CALIFORNIA CLASS Members in accordance with California law, and thereby systematically
28 underpaid overtime compensation to PLAINTIFF and the other CALIFORNIA CLASS
Members for their documented time worked, including overtime worked. As a result,

1 PLAINTIFF and the other CALIFORNIA CLASS Members worked more than eight (8) hours
2 in a workday and/or forty (40) hours in a workweek but were not fully compensated for
3 overtime worked as required by law.

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

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

26 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
27 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
28 without being provided ten (10) minute rest periods. Further, these employees were denied their

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

10 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT also systematically
11 failed to record and pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount
12 of wages due for split-shift premiums. The applicable Industrial Welfare Commission Wage
13 Orders define a "split-shift" as a "work schedule, which is interrupted by non-paid, non-
14 working, periods established by the employer, other than bona fide rest or meal periods." The
15 Industrial Welfare Commission Wage Orders further provide, "When an employee works a split
16 shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage
17 for that workday, except when the employee resides at the place of employment." DEFENDANT
18 required PLAINTIFF and CALIFORNIA CLASS Members to work split-shifts
19 throughout the CALIFORNIA CLASS PERIOD, but intentionally and unlawfully failed to pay
20 PLAINTIFF and the CALIFORNIA CLASS Members split-shift premium wages and failed to
21 pay PLAINTIFF and CALIFORNIA CLASS Members the correct overtime compensation for
22 hours worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result,
23 PLAINTIFF and the CALIFORNIA CLASS Members were underpaid during their employment
24 with DEFENDANT.

25 13. 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, knowingly and systematically
28 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for

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

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

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

28

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

7 **THE CALIFORNIA CLASS**

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

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

20 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
24 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
25 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
26 permits or suffers to permit this work.

27 23. DEFENDANT has the burden of proof to make sure that each and every
28 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as

1 required by California laws. DEFENDANT, however, as a matter of uniform and systematic
2 policy and procedure, failed to have in place during the CALIFORNIA CLASS PERIOD and
3 still fails to have in place a policy or practice to ensure that each and every CALIFORNIA
4 CLASS Member is paid as required by law. This common business practice is applicable to
5 each and every CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as
6 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
7 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

8 24. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
14 unfairly, and/or deceptively having in place a company policy, practice and
15 procedure that uniformly denied PLAINTIFF and the members of the
16 CALIFORNIA CLASS the correct overtime wages and split shift premiums and
17 otherwise violated applicable law; and
- 18 b. Committing an act of unfair competition in violation of the UCL, by failing to
19 provide mandatory meal and/or rest breaks to PLAINTIFF and the
20 CALIFORNIA CLASS members.

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

- 23 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as
25 a class will benefit the 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 CLASS will apply
28 uniformly to every member of the CALIFORNIA CLASS;

1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, was a Security Guard and was classified as non-
4 exempt employees paid on an hourly basis who were subjected to the
5 DEFENDANT’S deceptive practice and policy which failed to provide the
6 legally required meal and rest periods to the CALIFORNIA CLASS and thereby
7 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
8 CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S
9 employment practices. PLAINTIFF and the members of the CALIFORNIA
10 CLASS were and are similarly or identically harmed by the same unlawful,
11 deceptive, unfair and pervasive pattern of misconduct engaged in by
12 DEFENDANT; and

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

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

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

25 i. Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA CLASS which would establish incompatible
27 standards of conduct for the parties opposing the CALIFORNIA CLASS;
28 and/or;

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

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

10 i. With respect to the First Cause of Action, the final relief on behalf of the
11 CALIFORNIA CLASS sought does not relate exclusively to restitution
12 because through this claim PLAINTIFF seeks declaratory relief holding
13 that the DEFENDANT’S policy and practices constitute unfair
14 competition, along with declaratory relief, injunctive relief, and incidental
15 equitable relief as may be necessary to prevent and remedy the conduct
16 declared to constitute unfair competition;

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

23 i. The interests of the members of the CALIFORNIA CLASS in
24 individually controlling the prosecution or defense of separate actions in
25 that the substantial expense of individual actions will be avoided to
26 recover the relatively small amount of economic losses sustained by the
27 individual CALIFORNIA CLASS Members when compared to the
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

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

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

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

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

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

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

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

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

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 30. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, and Seventh,
10 causes of Action on behalf of a California sub-class, defined as all members of the
11 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
12 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to
13 the filing of the complaint and ending on the date as determined by the Court (the
14 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
15 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
16 Members is under five million dollars (\$5,000,000.00).

17 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly,
20 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to
21 correctly calculate compensation for the time worked by PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees,
23 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
24 this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied
25 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
26 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
27 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
28

1 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
2 accordingly.

3 32. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT'S employees who have been
5 systematically, intentionally and uniformly subjected to DEFENDANT'S company policy,
6 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
7 to include these additional job titles when they have been identified.

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

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

- 12 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
13 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
14 pay for missed meal and rest breaks in violation of the California Labor Code
15 and California regulations and the applicable California Wage Order;
- 16 b. Whether DEFENDANT has engaged in unfair competition by the above-listed
17 conduct;
- 18 c. The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and
- 20 d. Whether DEFENDANT'S conduct was willful.

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

- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
25 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
26 Lab. Code § 1198;
- 27 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
28 and the other members of the CALIFORNIA CLASS with all legally required

1 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
2 rest breaks;

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

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

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

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

19 c. The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
21 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
22 employee paid on an hourly basis who were subject to the DEFENDANT’S
23 practice and policy which failed to pay the correct amount of wages due to the
24 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
25 a result of DEFENDANT’S employment practices. PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
27 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
28 of misconduct engaged in by DEFENDANT; and

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

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

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

15 i. Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA LABOR SUB-CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CALIFORNIA LABOR SUB-CLASS; or

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

23 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
24 refused to act on grounds generally applicable to the CALIFORNIA LABOR
25 SUB-CLASS, making appropriate class-wide relief with respect to the
26 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
27 uniformly fails to pay all wages due. Including the correct wages for all time
28

1 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
2 by law;

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

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

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

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

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

27 iii. In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid

1 asserting their legal rights out of fear of retaliation by DEFENDANT,
2 which may adversely affect an individual’s job with DEFENDANT or
3 with a subsequent employer, the Class Action is the only means to assert
4 their 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 38. This 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 LABOR SUB-
13 CLASS predominate over any question affecting only individual CALIFORNIA
14 LABOR SUB-CLASS Members;
- 15 b. A Class Action is superior to any other available method for the fair and efficient
16 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
17 CLASS because in the context of employment litigation a substantial number of
18 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
19 their rights individually out of fear of retaliation or adverse impact on their
20 employment;
- 21 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
22 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
23 CLASS before the Court;
- 24 d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will
25 not be able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 e. There is a community of interest in obtaining appropriate legal and equitable
28 relief for the acts of unfair competition, statutory violations and other

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 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).

9 42. By the conduct alleged herein, DEFENDANT has engaged and continue to
10 engage in a business practice which violates California law, including but not limited to, the
11 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
12 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1198, and 2802 for which this Court
13 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203
14 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
15 including restitution of wages wrongfully withheld.

16 43. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
17 unfair in that these practices violated public policy, were immoral, unethical, oppressive
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 44. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
23 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
24 mandated meal and rest periods and the required amount of compensation for missed meal and
25 rest periods and split shift premiums wages owed, and failed to pay overtime correctly, due to a
26 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
27 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
28

1 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
2 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 45. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
4 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 46. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
8 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
10 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

25 50. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California
27 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
28

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

8 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
2 accurately calculate and pay overtime wages to PLAINTIFF and CALIFORNIA CLASS
3 Members.

4 56. 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 57. Cal. Lab. Code § 510 provides that employees in California shall not be employed
7 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
8 they receive additional compensation beyond their regular wages in amounts specified by law.

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

13 59. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
15 amount of time they worked, including overtime work. As set forth herein, DEFENDANT’S
16 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
17 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

18 60. DEFENDANT’S uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
20 whole, as a result of implementing a uniform policy and practice that denied accurate
21 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS in regards to overtime pay.

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

1 62. 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 overtime compensation for their time worked for DEFENDANT.

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

15 65. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time he worked which were 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 regularly required to work, and did in fact work overtime, and did in fact work
20 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
21 DEFENDANT’S business records and witnessed by employees.

22 66. 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 their overtime work, PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
26 which are presently unknown to them and which will be ascertained according to proof at trial.

27 67. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and

1 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
3 overtime wages for their overtime worked.

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

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

22 **THIRD 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 70. 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 78. 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 79. Cal. Lab. Code § 200 provides that:

5 As used in this article:

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

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

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

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

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

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

27 83. Cal. Lab. Code § 203 provides:

28 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 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.

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

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

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

9 **(Cal. Lab. Code § 226)**

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

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

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

- 17 a. Gross wages earned;
- 18 b. Total hours worked by the employee, except for any employee whose
19 compensation is solely based on a salary and who is exempt from payment of
20 overtime under subdivision (a) of Section 515 or any applicable order of the
21 Industrial Welfare Commission;
- 22 c. The number of piece rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis;
- 24 d. All deductions, provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item;
- 26 e. Net wages earned;
- 27 f. The inclusive dates of the period for which the employee is paid;
- 28 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

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

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

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

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

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

27 //

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

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

90. 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.

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

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

92. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT’s benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT’s uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These

1 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
2 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
6 do under the laws and regulations of California.

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

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

27 96. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to herself
2 and all individuals who are or previously were employed by DEFENDANT and classified as
3 non-exempt employees in California during the time period of December 19, 2018 until the
4 present (the "AGGRIEVED EMPLOYEES").

5 97. On December 19, 2019, PLAINTIFF gave written notice by certified mail to the
6 Labor and Workforce Development Agency (the "Agency") and the employer of the
7 specific provisions of this code alleged to have been violated as required by Labor Code §
8 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
9 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
10 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
11 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
12 to all AGGRIEVED EMPLOYEES as herein defined.

13 98. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
15 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
16 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
17 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and
18 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay
19 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
20 including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558,
21 1194, 1197, 1197.1, 1198, and applicable wage orders, and thereby gives rise to statutory
22 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as
23 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
24 State of California for the illegal conduct perpetrated on PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES.

26 99. Some or all of the conduct and violations alleged herein occurred during the
27 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
28 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations

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

6
7 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

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

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


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

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 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.
 - e. 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
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, and/or § 1194.

DATED: August 4, 2020

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

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

DATED: August 4, 2020

JCL LAW FIRM, APC

By:  _____

Jean-Claude Lapuyade
Attorney for Plaintiff

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

December 19, 2019

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

EDNET CAREER INSTITUTE
(dba Hamilton Private Security)
c/o THOMAS B HAMILTON
3772 CALLE JAZMIN
CALABASAS CA 91302

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Michael Andrews (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Ednet Career Institute, A California Corporation (dba Hamilton Private Security) (“Defendant”). Plaintiff was employed by Defendant in California from July 2016 to October 2019 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including overtime wages. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Michael Andrews

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5850 Oberlin Drive, Ste. 230A
San Diego, CA 92121
Telephone: (619)892-7095
Facsimile: (858) 404-9203
Website: www.zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
Website: www.jcl-lawfirm.com

Attorneys for Plaintiff

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

MICHAEL ANDREWS an individual on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

EDNET CAREER INSTITUTE, a California
Corporation (dba Hamilton Private Security);
and DOES 1-50, Inclusive,

Defendants.

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 WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant EDNET CAREER INSTITUTE, a California Corporation (dba
7 Hamilton Private Security) (“DEFENDANT”) is a California Corporation that at all relevant
8 times mentioned herein conducted and continues to conduct substantial and regular business
9 throughout California.

10 2. DEFENDANT is a full service provider of security services.

11 3. PLAINTIFF was employed by DEFENDANT in California from July 2016 to
12 October 2019 as a Security Guard and was at all times classified by DEFENDANT as a non-
13 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
14 periods.

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

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

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

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

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

20 **THE CONDUCT**

21 8. PLAINTIFF'S Security Guard position was a non-exempt position and was in
22 fact classified as non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA
23 CLASS Members employed by DEFENDANT performed manual tasks but were not paid the
24 overtime wages to which they were entitled because of DEFENDANT'S systematic policies and
25 practices of failing to correctly record all time worked, including overtime worked.
26 DEFENDANT failed to correctly pay overtime wages to PLAINTIFF and the other
27 CALIFORNIA CLASS Members in accordance with California law, and thereby systematically
28 underpaid overtime compensation to PLAINTIFF and the other CALIFORNIA CLASS
Members for their documented time worked, including overtime worked. As a result,

1 PLAINTIFF and the other CALIFORNIA CLASS Members worked more than eight (8) hours
2 in a workday and/or forty (40) hours in a workweek but were not fully compensated for
3 overtime worked as required by law.

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

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

26 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
27 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
28 without being provided ten (10) minute rest periods. Further, these employees were denied their

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

9 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT also systematically
10 failed to record and pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount
11 of wages due for split-shift premiums. The applicable Industrial Welfare Commission Wage
12 Orders define a “split-shift” as a “work schedule, which is interrupted by non-paid, non-
13 working, periods established by the employer, other than bona fide rest or meal periods.” The
14 Industrial Welfare Commission Wage Orders further provide, “When an employee works a split
15 shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage
16 for that workday, except when the employee resides at the place of employment.”
17 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work split-shifts
18 throughout the CALIFORNIA CLASS PERIOD, but intentionally and unlawfully failed to pay
19 PLAINTIFF and the CALIFORNIA CLASS Members split-shift premium wages and failed to
20 pay PLAINTIFF and CALIFORNIA CLASS Members the correct overtime compensation for
21 hours worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result,
22 PLAINTIFF and the CALIFORNIA CLASS Members were underpaid during their employment
23 with DEFENDANT.

24 13. 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, knowingly and systematically
27 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
28 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to

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

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

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

27 16. By reason of this uniform conduct applicable to PLAINTIFF and the other
28 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
3 and CALIFORNIA LABOR SUB-CLASS.

4 **THE CALIFORNIA CLASS**

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

14 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

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

24 23. DEFENDANT has the burden of proof to make sure that each and every
25 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
26 required by California laws. DEFENDANT, however, as a matter of uniform and systematic
27 policy and procedure, failed to have in place during the CALIFORNIA CLASS PERIOD and
28 still fails to have in place a policy or practice to ensure that each and every CALIFORNIA

1 CLASS Member is paid as required by law. This common business practice is applicable to
2 each and every CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as
3 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
4 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

5 24. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
6 CLASS Members is impracticable.

7 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
8 California law by:

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

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

- 20 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
21 joinder of all such persons is impracticable and the disposition of their claims as
22 a class will benefit the parties and the Court;
- 23 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
24 raised in this Complaint are common to the CALIFORNIA CLASS will apply
25 uniformly to every member of the CALIFORNIA CLASS;
- 26 c. The claims of the representative PLAINTIFF are typical of the claims of each
27 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
28 of the CALIFORNIA CLASS, was a Security Guard and was classified as non-

1 exempt employees paid on an hourly basis who were subjected to the
2 DEFENDANT’S deceptive practice and policy which failed to provide the
3 legally required meal and rest periods to the CALIFORNIA CLASS and thereby
4 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
5 CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S
6 employment practices. PLAINTIFF and the members of the CALIFORNIA
7 CLASS were and are similarly or identically harmed by the same unlawful,
8 deceptive, unfair and pervasive pattern of misconduct engaged in by
9 DEFENDANT; and

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

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA CLASS which would establish incompatible
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;
25 and/or;
 - 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 CLASS which would as a practical matter be dispositive of interests 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

the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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

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

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

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’S employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.

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

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

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

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

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

- 10 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
11 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
12 pay for missed meal and rest breaks in violation of the California Labor Code
13 and California regulations and the applicable California Wage Order;
- 14 b. Whether DEFENDANT has engaged in unfair competition by the above-listed
15 conduct;
- 16 c. The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and
- 18 d. Whether DEFENDANT’S conduct was willful.

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

- 21 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
22 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
23 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
24 Lab. Code § 1198;
- 25 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
26 and the other members of the CALIFORNIA CLASS with all legally required
27 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
28 rest breaks;

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

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

9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
11 is impracticable and the disposition of their claims as a class will benefit the
12 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 LABOR SUB-
15 CLASS and will apply uniformly to every member of the CALIFORNIA
16 LABOR SUB-CLASS;

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

27 d. The representative PLAINTIFF will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

- 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

1 injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA
2 LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;
- 6 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
7 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
8 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 9 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
10 ascertainable from the business records of DEFENDANT. The CALIFORNIA
11 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
12 employed by DEFENDANT in California during the CALIFORNIA LABOR
13 SUB-CLASS PERIOD; 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 LABOR SUB-CLASS.

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

27 41. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair competition may
4 be enjoined in any court of competent jurisdiction. The court may make such orders or
5 judgments, including the appointment of a receiver, as may be necessary to prevent the
6 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).

7 42. By the conduct alleged herein, DEFENDANT has engaged and continue to
8 engage in a business practice which violates California law, including but not limited to, the
9 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
10 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1198, and 2802 for which this Court
11 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203
12 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
13 including restitution of wages wrongfully withheld.

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

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

1 45. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
2 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

5 46. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
6 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
8 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

23 50. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California
25 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
26 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
27 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

10 59. 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 worked, including overtime work. As set forth herein, DEFENDANT'S
13 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
14 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

15 60. 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 denied accurate
18 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS in regards to overtime pay.

20 61. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the correct time worked and consequently underpaid the actual overtime
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 62. 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 overtime compensation for their time worked for DEFENDANT.

 63. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
from the overtime requirements of the law. None of these exemptions are applicable to

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
3 to a valid collective bargaining agreement that would preclude the causes of action contained
4 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the
5 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT'S violations of non-negotiable,
6 non-waivable rights provided by the State of California.

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

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

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

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

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

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

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

17 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS** 20 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

16
17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN DUE**

19 **(Cal. Lab. Code § 203)**

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

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

25 79. Cal. Lab. Code § 200 provides that:

26 As used in this article:

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

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

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

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

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

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

19 83. Cal. Lab. Code § 203 provides:

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

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

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

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

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

22 //
23 //
24 //
25 //
26 //
27 //
28 //

1 **SEVENTH 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 90. 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 91. 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 92. 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 93. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
4 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
5 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
6 the statutory rate and costs under Cal. Lab. Code § 2802.

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 overtime wages and all sums
17 unlawfully withheld from compensation due to PLAINTIFF and the other
18 members of the 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, and Seventh Causes
24 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
25 pursuant to Cal. Code of Civ. Proc. § 382;
- 26 b. Compensatory damages, according to proof at trial, including compensatory
27 damages for overtime compensation, unreimbursed expenses, and other
28 compensation due to PLAINTIFF and the other members of the CALIFORNIA

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

LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The 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.
- e. 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

3. On all claims:

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

DATED: December 2, 2019

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: December 2, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF