

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

STAT MED, P.C., A CALIFORNIA MEDICAL PROFESSIONAL CORPORATION; URGENT CARE PARTNERS, INC., a Corporation and Does 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MADISON MARRERO, PATRICK MCGRAW, ALEXANDRIA MORTON, HILARY PAYNE and MARK WOO, individuals, on behalf of themselves and on behalf of all persons similarly situated,

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

**ENDORSED
FILED**

ALAMEDA COUNTY

NOV 14 2019

CLERK OF THE SUPERIOR COURT

By Roni Gill
Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda Superior Court
1225 Fallon Street
Oakland, California 94612

CASE NUMBER:
(Número del caso)
HC 19043214

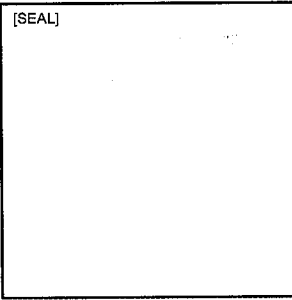
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

DATE: **NOV 14 2019** **Chad Finke** Clerk, by **Roni Gill**, 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

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



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ZAKAY LAW GROUP, APC
Shani O. Zakay (State Bar #277924)
3990 Old Town Ave. Ste.C204
San Diego, CA 92110
Telephone: (619)255-9047

**additional counsel on next page*
Attorneys for Plaintiffs

ENDORSED
FILED
AT ALAMEDA COUNTY
NOV 14 2019
CLERK OF THE SUPERIOR COURT
By Roni Gill
Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

HG 19043214

MADISON MARRERO, PATRICK
MCGRAW, ALEXANDRIA MORTON,
HILARY PAYNE and MARK WOO,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

STAT MED, P.C., A CALIFORNIA
MEDICAL PROFESSIONAL
CORPORATION; URGENT CARE
PARTNERS, INC., a Corporation; and
Does 1 through 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 PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

DEMAND FOR A JURY TRIAL

Filed By Fox

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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232

1 Plaintiffs Madison Marrero, Patrick McGraw, Alexandria Morton, Hilary Payne and Mark
2 Woo (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated
3 current and former employees, allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Stat Med, P.C., A California Medical Professional Corporation, is a
8 California corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California. Defendant Urgent Care
10 Partners, Inc. is a corporation that at all relevant times mentioned herein conducted and
11 continues to conduct substantial and regular business throughout California. As evidence by
12 PLAINTIFFS’ paychecks and company documents, Defendants Stat Med P.C. and Urgent Care
13 Partners, Inc. were joint employers of PLAINTIFFS and are referred to herein as
14 (“DEFENDANT”).

15 2. DEFENDANT provides immediate care, preventive care, employee health
16 services and other patient care services at their four locations in Northern California.

17 3. Plaintiff Marrero was employed by DEFENDANT in California as a non-exempt
18 employee entitled to overtime pay and meal and rest periods from March of 2018 to March of
19 2019. Plaintiff Marrero was at all times relevant mentioned herein classified by DEFENDANT
20 as a non-exempt employee paid in whole or in part on an hourly basis.

21 4. Plaintiff McGraw was employed by DEFENDANT in California as a non-exempt
22 employee entitled to overtime pay and meal and rest periods from July of 2018 to February of
23 2019. Plaintiff McGraw was at all times relevant mentioned herein classified by DEFENDANT
24 as a non-exempt employee paid in whole or in part on an hourly basis.

25 5. Plaintiff Morton was employed by DEFENDANT in California as a non-exempt
26 employee entitled to overtime pay and meal and rest periods from June of 2018 to March of
27 2019. Plaintiff Morton was at all times relevant mentioned herein classified by DEFENDANT
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1 as a non-exempt employee paid in whole or in part on an hourly basis.

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3 6. Plaintiff Payne was employed by DEFENDANT in California as a non-exempt
4 employee entitled to overtime pay and meal and rest periods from February of 2019 to August
5 of 2019. Plaintiff Payne was at all times relevant mentioned herein classified by DEFENDANT
6 as a non-exempt employee paid in whole or in part on an hourly basis.

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8 7. Plaintiff Woo was employed by DEFENDANT in California as a non-exempt
9 employee entitled to overtime pay and meal and rest periods from July of 2017 to February of
10 2019. Plaintiff Woo was at all times relevant mentioned herein classified by DEFENDANT as
11 a non-exempt employee paid in whole or in part on an hourly basis.

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13 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California
14 class, defined as all individuals who are or previously were employed by Defendants Stat Med,
15 P.C., A California Medical Professional Corporation, and/or Urgent Care Partners, Inc. in
16 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
17 during the period beginning on the date four (4) years prior to the filing of this Complaint and
18 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
19 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
20 million dollars (\$5,000,000.00).

21
22 9. PLAINTIFFS bring this Class Action on behalf of themselves and a
23 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
24 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy
25 and practice which failed to lawfully compensate these employees for all their overtime worked.
26 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive
27 business practice whereby DEFENDANT retained and continues to retain wages due
28 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and

1 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

19
20 **THE CONDUCT**

21 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
22 to fail to accurately calculate and pay PLAINTIFFS and the other members of the
23 CALIFORNIA CLASS for all their time worked. DEFENDANT unlawfully and unilaterally
24 failed to accurately calculate minimum and overtime wages for all time worked by
25 PLAINTIFFS and other members of the CALIFORNIA CLASS in order to avoid paying these
26 employees the correct overtime compensation. As a result, PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS forfeited wages due them for working without
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1 compensation at the correct rates. DEFENDANT's uniform policy and practice to not pay the
2 members of the CALIFORNIA CLASS the correct minimum and overtime wages for all time
3 worked in accordance with applicable law is evidenced by DEFENDANT's business records.
4 This uniform policy and practice of DEFENDANT was intended to purposefully avoid the
5 payment of the correct compensation as required by California law which allowed
6 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
7 with the law.

8 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
9 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
10 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
12 all time worked, meaning the time during which an employee was subject to the control of an
13 employer, including all the time the employee was permitted or suffered to permit this work.
14 DEFENDANT required these employees to work off the clock without paying them for all the
15 time they were under DEFENDANT's control. Specifically, DEFENDANT required
16 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
17 duty meal break. PLAINTIFFS were often interrupted by work assignments. Indeed there were
18 many days where PLAINTIFFS did not even receive a partial lunch. As a result, PLAINTIFFS
19 and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
20 compensation by regularly working without their time being accurately recorded and without
21 compensation at the applicable minimum wage and overtime rates. To the extent that the time
22 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
23 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
24 1197, and 1197.1.

25 14. 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
27 a matter of company policy, practice and procedure, intentionally and knowingly failed to
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1 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
2 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
3 intended to purposefully avoid the payment of the correct overtime compensation as required
4 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
5 over competitors who complied with the law. To the extent equitable tolling operates to toll
6 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
7 PERIOD should be adjusted accordingly.

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

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

2 17. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA
3 CLASS Members to respond to calls and engage in additional work, including but not limited
4 to, responding to the immediate needs of their managers, checking their upcoming schedules,
5 detailing their interactions with customers and inputting other briefings and details from their
6 superiors, this resulted in a second reporting for work in a single workday. In such a
7 circumstance of a second reporting for work in a single workday, DEFENDANT failed to pay
8 these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision
9 5(B) states: "If an employee is required to report for work a second time in any one workday
10 and is furnished less than two (2) hours of work on the second reporting, said employee shall
11 be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the
12 minimum wage." Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

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

24 19. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
25 Members as a business expense, are required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
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1 with the use of their personal cellular phones for DEFENDANT’s benefit. As a result, in the
2 course of their employment with DEFENDANT, PLAINTIFFS and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which include, but are not
4 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
5 benefit of DEFENDANT.

6 20. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
7 other members of the CALIFORNIA CLASS with complete and accurate wage statements
8 which failed to show, among other things, the correct gross and net wages earned and correct
9 amount of time worked. Cal. Lab. Code § 226 provides that every employer shall furnish each
10 of his or her employees with an accurate itemized wage statement in writing showing, among
11 other things, gross wages earned and all applicable hourly rates in effect during the pay period
12 and the corresponding amount of time worked at each hourly rate. Additionally, the wage
13 statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS Members
14 violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list the correct
15 name of the legal entity that was the employer of PLAINTIFF and the CALIFORNIA CLASS
16 Members Aside, from the violations listed above in this paragraph, DEFENDANT failed to
17 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
18 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
19 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
20 which violated Cal. Lab. Code § 226.

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

5 22. PLAINTIFFS were also from time to time unable to take off duty meal and rest
6 breaks and was not fully relieved of duty for their meal periods. PLAINTIFFS were required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
8 without receiving an off-duty meal break. Further, DEFENDANT failed to provide
9 PLAINTIFFS with a second off-duty meal period from time to time in which they were required
10 by DEFENDANT to work ten (10) hours of work. PLAINTIFFS therefore forfeited meal and
11 rest breaks without additional compensation and in accordance with DEFENDANT's strict
12 corporate policy and practice. DEFENDANT also provided PLAINTIFFS with a pay stub that
13 failed to accurately display PLAINTIFFS' correct rates of overtime pay and payments for
14 missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).
15 To date, DEFENDANT has not fully paid PLAINTIFFS the overtime compensation still owed
16 to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in
17 controversy for the PLAINTIFFS individually does not exceed the sum or value of \$75,000.

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19 **JURISDICTION AND VENUE**

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

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

3 **THE CALIFORNIA CLASS**

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

14 26. 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 27. The California Legislature has commanded that "all wages... ..earned by any
18 person in any employment are due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays", and further that "[a]ny work
20 in excess of eight hours in one workday and any work in excess of 40 hours in any one
21 workweek . . . shall be compensated at the rate of no less than one and one-half times the
22 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
23 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
24 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
25 professional employees, provided [inter alia] that the employee is primarily engaged in duties
26 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
27 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the
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1 PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
2 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

21 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
22 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
23 employee for all overtime worked at the applicable rate, as required by California Labor Code
24 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
25 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
26 as to include all earnings in the overtime compensation calculation as required by California
27 Labor Code §§ 510, *et seq.*

1 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

5 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
7 place company policies, practices and procedures that failed to pay all
8 minimum and overtime wages due the CALIFORNIA CLASS for all time
9 worked, and failed to accurately record the applicable rates of all overtime
10 worked by the CALIFORNIA CLASS;

11 (b) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
13 unlawfully, unfairly, and/or deceptively having in place a company policy,
14 practice and procedure that failed to correctly calculate overtime
15 compensation due to PLAINTIFFS and the members of the
16 CALIFORNIA CLASS;

17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
19 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
20 the CALIFORNIA CLASS members with necessary expenses incurred in
21 the discharge of their job duties; and,

22 (D) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
24 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and
25 the CALIFORNIA CLASS members.

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

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

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will 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 parties opposing the CALIFORNIA CLASS; and/or,

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

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

1) 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 PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and

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

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

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

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

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

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

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

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

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

15 (a) The questions of law and fact common to the CALIFORNIA CLASS
16 predominate over any question affecting only individual CALIFORNIA
17 CLASS Members because the DEFENDANT's employment practices are
18 uniform and systematically applied with respect to the CALIFORNIA
19 CLASS;

20 (b) A Class Action is superior to any other available method for the fair and
21 efficient adjudication of the claims of the members of the CALIFORNIA
22 CLASS because in the context of employment litigation a substantial
23 number of individual CALIFORNIA CLASS Members will avoid
24 asserting their rights individually out of fear of retaliation or adverse
25 impact on their employment;

26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before the
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Court;

- (d) PLAINTIFFS, 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 a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

1 **THE CALIFORNIA LABOR SUB-CLASS**

2 37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
3 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
4 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
5 SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the
6 filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA
7 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
8 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
9 five million dollars (\$5,000,000.00).

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

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

27 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
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1 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 4 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
5 overtime compensation to members of the CALIFORNIA LABOR SUB-
6 CLASS in violation of the California Labor Code and California
7 regulations and the applicable California Wage Order;
- 8 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
9 entitled to overtime compensation for overtime worked under the overtime
10 pay requirements of California law;
- 11 (c) Whether DEFENDANT failed to accurately record the applicable
12 overtime rates for all overtime worked PLAINTIFFS and the other
13 members of the CALIFORNIA LABOR SUB-CLASS;
- 14 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with legally
16 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 17 (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR SUB-CLASS with accurate
19 itemized wage statements;
- 20 (f) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (g) The proper measure of damages and penalties owed to the members of the
23 CALIFORNIA LABOR SUB-CLASS; and,
- 24 (h) Whether DEFENDANT's conduct was willful.

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

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

- 9 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
10 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
11 CLASS the correct overtime pay for which DEFENDANT is liable
12 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 13 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
14 accurately pay PLAINTIFFS and the members of the CALIFORNIA
15 LABOR SUB-CLASS the correct minimum wage pay for which
16 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 17 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
18 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
19 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
20 and the legally required rest breaks;
- 21 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
22 the CALIFORNIA CLASS members with necessary expenses incurred in
23 the discharge of their job duties.
- 24 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
25 the members of the CALIFORNIA LABOR SUB-CLASS with an
26 accurate itemized statement in writing showing all accurate and applicable
27 overtime rates in effect during the pay period and the corresponding
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1 amount of time worked at each overtime rate by the employee; and,
2 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
3 when an employee is discharged or quits from employment, the employer
4 must pay the employee all wages due without abatement, by failing to
5 tender full payment and/or restitution of wages owed or in the manner
6 required by California law to the members of the CALIFORNIA LABOR
7 SUB-CLASS who have terminated their employment.

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

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
11 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
12 Members is impracticable and the disposition of their claims as a class
13 will benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the CALIFORNIA
16 LABOR SUB-CLASS and will apply uniformly to every member of the
17 CALIFORNIA LABOR SUB-CLASS;
- 18 (c) The claims of the representative PLAINTIFFS are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS.
20 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
21 SUB-CLASS, were non-exempt employees paid on an hourly basis and
22 subjected to the DEFENDANT's practice and policy which failed to pay
23 the correct rate of overtime wages due to the CALIFORNIA LABOR
24 SUB-CLASS for all overtime worked. PLAINTIFFS sustained economic
25 injury as a result of DEFENDANT's employment practices.
26 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
27 CLASS were and are similarly or identically harmed by the same

1 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
2 in by DEFENDANT; and,

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

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

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

17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA LABOR SUB-CLASS which
19 would establish incompatible standards of conduct for the parties
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
27 or refused to act on grounds generally applicable to the CALIFORNIA
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1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the
4 correct overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

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

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

21 (b) A Class Action is superior to any other available method for the fair and
22 efficient adjudication of the claims of the members of the CALIFORNIA
23 LABOR SUB-CLASS because in the context of employment litigation a
24 substantial number of individual CALIFORNIA LABOR SUB-CLASS
25 Members will avoid asserting their rights individually out of fear of
26 retaliation or adverse impact on their employment;

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
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1 numerous that it is impractical to bring all members of the CALIFORNIA
2 LABOR SUB-CLASS before the Court;

3 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
4 Members, will not be able to obtain effective and economic legal redress
5 unless the action is maintained as a Class Action;

6 (e) There is a community of interest in obtaining appropriate legal and
7 equitable relief for the acts of unfair competition, statutory violations and
8 other improprieties, and in obtaining adequate compensation for the
9 damages and injuries which DEFENDANT's actions have inflicted upon
10 the CALIFORNIA LABOR SUB-CLASS;

11 (f) There is a community of interest in ensuring that the combined assets of
12 DEFENDANT are sufficient to adequately compensate the members of
13 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

18 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANT. The
20 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
21 CLASS Members classified as non-exempt employees during the
22 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 47. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

10 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

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

18 Cal. Bus. & Prof. Code § 17203.

19 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, for which
23 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
24 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
25 competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

26 56. PLAINTIFFS further demand on behalf of themselves and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty
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1 paid rest period was not timely provided as required by law.

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

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

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

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

22 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
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1 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 204, 510, 1194 and 1198]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

62. PLAINTIFFS, 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.

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

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

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

66. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those

1 fixed by the Industrial Welfare Commission is unlawful.

2 67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
4 amount of overtime worked and correct applicable overtime rate for the amount of overtime
5 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
6 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
7 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
8 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
9 all overtime worked.

10 68. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
12 result of implementing a uniform policy and practice that denied accurate compensation to
13 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
14 overtime worked, including, the work performed in excess of eight (8) hours in a workday
15 and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

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

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23 **THIRD CAUSE OF ACTION**

24 **For Failure To Pay Minimum Wages**

25 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

26 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**
27 **and Against All Defendants)**

1 78. PLAINTIFFS, 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. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
5 CLASS bring a claim for DEFENDANT’s willful and intentional violations of the California
6 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure
7 to accurately calculate and pay minimum and reporting time wages to PLAINTIFFS and
8 CALIFORNIA CLASS Members.

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

11 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
12 commission is the minimum wage to be paid to employees, and the payment of a less wage than
13 the minimum so fixed is unlawful.

14 82. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
15 including minimum wage compensation and interest thereon, together with the costs of suit.

16 83. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
17 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
18 amount of time they work. As set forth herein, DEFENDANT’s uniform policy and practice
19 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
20 other members of the CALIFORNIA LABOR SUB-CLASS.

21 84. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
22 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
23 result of implementing a uniform policy and practice that denies accurate compensation to
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS in regards
25 to minimum wage pay.

26 85. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately calculated the correct time worked and consequently underpaid the actual time
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1 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

5 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
7 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

11 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true time they worked, PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained
16 according to proof at trial.

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

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

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

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17 **FOURTH CAUSE OF ACTION**

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

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

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

22 92. PLAINTIFFS, 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 93. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and

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

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

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

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23 **FIFTH CAUSE OF ACTION**

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

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

26 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
27 **Defendants)**

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1 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
2 **Defendants)**

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

6 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
7 an “accurate itemized” statement in writing showing:

8 (1) gross wages earned,

9 (2) total hours worked by the employee, except for any employee whose compensation
10 is solely based on a salary and who is exempt from payment of overtime under
11 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
12 Commission,

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

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

17 (5) net wages earned,

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

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

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

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

26 102. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
27 other members of the CALIFORNIA CLASS with complete and accurate wage statements

1 which failed to show, among other things, the correct gross and net wages earned and correct
2 amount of time worked. Cal. Lab. Code § 226 provides that every employer shall furnish each
3 of his or her employees with an accurate itemized wage statement in writing showing, among
4 other things, gross wages earned and all applicable hourly rates in effect during the pay period
5 and the corresponding amount of time worked at each hourly rate. Aside, from the violations
6 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage
7 statement that lists all the requirements under California Labor Code 226 *et seq.* Additionally,
8 the wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
9 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
10 the correct name of the legal entity that was the employer of PLAINTIFF and the
11 CALIFORNIA CLASS Members. As a result, DEFENDANT from time to time provided
12 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
13 which violated Cal. Lab. Code § 226.

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

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SEVENTH CAUSE OF ACTION

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For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

105. 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.

106. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's uniform policy, practice and procedure is to not reimburse PLAINTIFFS 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. Further, PLAINTIFF and other CALIFORNIA CLASS Members were also not reimbursed or indemnified by DEFENDANT for the cost associated with using their personal vehicles while performing for DEFENDANT. As a result, in the course of their employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to travel all on behalf of and for the benefit of DEFENDANT. These expenses are necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any

1 waiver of this expectation. Although these expenses are necessary expenses incurred by
2 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to
3 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
4 for these expenses as an employer is required to do under the laws and regulations of California.

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

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10 **EIGHTH CAUSE OF ACTION**

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

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

13 **(By Plaintiff Meola and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

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

18 109. Cal. Lab. Code § 200 provides that:

19 As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72
hours thereafter, unless the employee has given 72 hours previous notice of his

1 or her intention to quit, in which case the employee is entitled to his or her wages
2 at the time of quitting. Notwithstanding any other provision of law, an employee
3 who quits without providing a 72-hour notice shall be entitled to receive payment
4 by mail if he or she so requests and designates a mailing address. The date of the
5 mailing shall constitute the date of payment for purposes of the requirement to
6 provide payment within 72 hours of the notice of quitting.

7 112. There were no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
8 SUB-CLASS Members' employment contract.

9 113. Cal. Lab. Code § 203 provides:

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

15 114. The employment of Plaintiff Meola and many CALIFORNIA LABOR SUB-
16 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
17 to these employees who actually worked overtime, as required by law.

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

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28 **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA

- 1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 2 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 4 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
- 5 withheld from compensation due to PLAINTIFFS and the other members of the
- 6 CALIFORNIA CLASS; and,
- 7 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 8 for restitution of the sums incidental to DEFENDANT's violations due to
- 9 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 10 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 11 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 12 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
- 13 action pursuant to Cal. Code of Civ. Proc. § 382;
- 14 B) Compensatory damages, according to proof at trial, including compensatory
- 15 damages for minimum wage and overtime compensation due PLAINTIFFS and
- 16 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
- 17 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
- 18 at the statutory rate;
- 19 C) Meal and rest period compensation pursuant to California Labor Code Section
- 20 226.7 and the applicable IWC Wage Order;
- 21 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 22 in which a violation occurs and one hundred dollars (\$100) per each member of
- 23 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 24 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 25 an award of costs for violation of Cal. Lab. Code § 226;
- 26 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 27 1197;
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- F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,
 - G) The wages of all terminated employees from the CALIFORNIA LABOR SUBCLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On 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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

Dated: November 13, 2019 ZAKAY LAW GROUP, APC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: November 13, 2019

ZAKAY LAW GROUP, APC

By: _____


Shani O. Zakay
Attorney for Plaintiffs_