

**SUMMONS
(CITACION JUDICIAL)**

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

KEYES MOTORS, INC. dba KEYES LEXUS; a California Corporation;
and DOES 1-50, Inclusive,

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

ELIDETH CARBAJAL, an individual, on behalf of herself and on behalf
of all persons similarly situated and the State of California,

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

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

DEC 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), 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
111 North Hill Street
Los Angeles, CA 90012

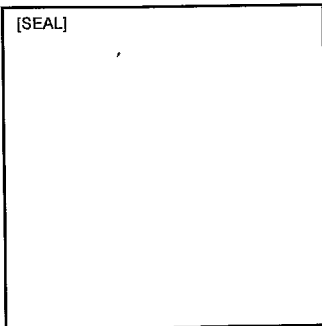
CASE NUMBER
(Número del Caso)
2021 CV 49714

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE: ~~DEC 29 2020~~ **DEC 30 2020** Clerk, by SHERRI R. CARTER Deputy Kristina Vargas
(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: 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):
- by personal delivery on (date):

VIA FAX

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

9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 ELIDETH CARBAJAL, an individual, on
behalf of herself and on behalf of all persons
14 similarly situated and the State of California,

15 Plaintiff,

16 v.

17 KEYES MOTORS, INC. dba KEYES
LEXUS; a California Corporation; and
18 DOES 1-50, Inclusive,

19 Defendants.
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Case No: **20STCV49714**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §1197, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et se*.
- 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;

DEMAND FOR A JURY TRIAL

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

DEC 30 2020

Sherril R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

VIA FAX

1 Plaintiff ELIDETH CARBAJAL (“PLAINTIFF” or “PLAINTIFFS”), an
2 individual, on behalf of herself and all other similarly situated current and former
3 employees, alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant KEYES MOTORS INC. dba KEYES LEXUS (“DEFENDANT”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT owns and operates a car dealership in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from November
11 2018 to October 2020 and was at all times during her employment with DEFENDANT
12 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to
13 the legally required meal and rest periods and payment of minimum and overtime wages due for
14 all time worked..

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

21 5. PLAINTIFF brings this Class Action on behalf of herself 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 PLAINTIFF and the other members
27 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA named
28 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal
2 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 PLAINTIFFS who therefore sues these Defendants by such fictitious names
6 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
7 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
10 are 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. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. DEFENDANT required
25 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
26 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
27 work during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was
28 from time to time interrupted by work assignments while what should have been PLAINTIFF's
off-duty meal break. Indeed there were days where PLAINTIFF did not even receive a partial

1 lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum
2 wage and overtime compensation by working without their time being accurately recorded and
3 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
4 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
5 for all time worked is evidenced by DEFENDANT's business records.

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other CALIFORNIA CLASS Members were required to perform work from time to time as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
13 which these employees are required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
15 without additional compensation and in accordance with DEFENDANT's strict corporate policy
16 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
17 production levels for each employee.

18 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS Members were also required from time to time 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 from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers.

1 11. State law provides that employees must be paid overtime at one-and-one-half
2 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

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

3 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
8 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
9 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
10 were not limited to, costs related to the use of their personal cellular phones and travel with their
11 personal vehicles, on behalf of and for the benefit of DEFENDANT.

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

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
27 missed meal and rest periods and all wages due to them. This uniform policy and practice of
28 DEFENDANT was intended to purposefully avoid the payment for all time worked as required

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

5 17. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
9 calculate and record all missed meal and rest periods and all wages due to PLAINTIFF and
10 other CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal
11 and rest break wages and all other wages due to them is the DEFENDANT’s burden. As a result
12 of DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT
13 failed to properly calculate and/or pay all required compensation for work performed by the
14 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
15 promulgated thereunder as herein alleged.

16 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
18 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
19 did not have a policy or practice which provides timely off-duty meal and rest breaks to
20 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
21 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of
22 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
24 DEFENDANT’s business records. DEFENDANT also failed to pay PLAINTIFF earned
25 commission wages upon termination of employment with DEFENDANT. To date,
26 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
27 failed to pay any penalties owed to her under California Labor Code Section 203. The amount in
28 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

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

1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
20 in place company policies, practices and procedures that uniformly and
21 systematically failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages owed and
23 overtime wages owed for work performed by these employees;
- 24 b. Committing an act of unfair competition in violation of the UCL, by failing
25 to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
26 with the legally required meal and rest periods; and,
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.

1 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members with necessary expenses incurred in the discharge of their job
3 duties.

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

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

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

12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
14 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
15 scheme who was subjected to the DEFENDANT's deceptive practice and policy
16 which failed to provide the legally required meal and rest periods to the
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to
18 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
19 injury as a result of DEFENDANT's employment practices. PLAINTIFFS and
20 the members of the CALIFORNIA CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and,

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

28. 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:
 - i. 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;
 - ii. 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 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 seek 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;

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

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

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

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

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

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

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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.

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 31. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
20 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
22 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
23 to the filing of the complaint and ending on the date as determined by the Court (the
24 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
25 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order

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

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

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

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

- 21 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
22 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
23 missed meal and rest breaks in violation of the California Labor Code and
24 California regulations and the applicable California Wage Order;
- 25 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
26 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
27 statements;

- 1 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 2 conduct;
- 3 d. The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and,
- 5 e. Whether DEFENDANT's conduct was willful.

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

- 8 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
- 9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all
- 10 wages due for overtime worked, for which DEFENDANT is liable pursuant to
- 11 Cal. Lab. Code § 1194;
- 12 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 14 the correct minimum wage pay for which DEFENDANT is liable pursuant to
- 15 Cal. Lab. Code §§ 1194 and 1197;
- 16 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 17 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 18 statement in writing showing the corresponding correct amount of wages earned
- 19 by the employee;
- 20 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
- 21 and the other members of the CALIFORNIA CLASS with all legally required
- 22 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 23 paid rest breaks;
- 24 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 25 CALIFORNIA CLASS members with necessary expenses incurred in the
- 26 discharge of their job duties; and,
- 27 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 28 employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment
2 and/or restitution of wages owed or in the manner required by California law to
3 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
4 their employment.

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

- 7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
9 is impracticable and the disposition of their claims as a class will benefit the
10 parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
13 CLASS and will apply uniformly to every member of the CALIFORNIA
14 LABOR SUB-CLASS;
- 15 c. The claims of the representative PLAINTIFFS are typical of the claims of each
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
17 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
18 employee paid on an hourly basis who was subjected to the DEFENDANT'S
19 practice and policy which failed to pay the correct amount of wages due to the
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
21 as a result of DEFENDANT'S employment practices. PLAINTIFFS and the
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
24 of misconduct engaged in by DEFENDANT; and
- 25 d. The representative PLAINTIFFS will fairly and adequately represent and protect
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation. There are
28 no material conflicts between the claims of the representative PLAINTIFFS and

1 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
4 Members.

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

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

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

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

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

26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

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

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

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

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

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

39. 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. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

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

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

23 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

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

5 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
9 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
10 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
11 competition, including restitution of wages wrongfully withheld.

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

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

27 46. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
28 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

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

7 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
9 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
10 for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
14 was not timely provided as required by law.

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

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

26 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14
15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all
19 Defendants)**

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

23 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
27 Members.

28 57. 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.

1 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
3 than the minimum so fixed is unlawful.

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

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

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

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

22 63. 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 the correct minimum wage compensation for their time worked for DEFENDANT.

25 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
26 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
27 than they were entitled to, constituting a failure to pay all earned wages.

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1 65. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for the true time they worked, PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
5 injury in amounts which are presently unknown to them and which will be ascertained
6 according to proof at trial.

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

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

22 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
25 the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§
28 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties

1 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
2 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR
4 SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME COMPENSATION**
8 **(Cal. Lab. Code §§510, et seq.)**
9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
10 **against all Defendants)**

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

14 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
16 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
17 pay these employees for all overtime worked, including, work performed in excess of eight (8)
18 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
19 workweek.

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

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

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

1 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
3 DEFENDANT and were not paid for all the time they worked, including overtime work.

4 75. DEFENDANT's uniform pattern of unlawful wage and hour practices
5 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
6 whole, as a result of implementing a uniform policy and practice that failed to accurately record
7 overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and
8 denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess
10 of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
11 in any workweek.

12 76. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
15 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
16 California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
19 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
20 receive full compensation for overtime worked.

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

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

4 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

11 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true amount of time they worked, PLAINTIFF 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 82. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
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 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
23 overtime worked.

24 83. 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 overtime worked and provide them with the requisite overtime compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of
2 depriving them of their property and legal rights, and otherwise causing them injury in order to
3 increase company profits at the expense of these employees.

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

15
16 **FOURTH CAUSE OF ACTION**

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

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

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

24 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
3 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
6 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
7 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
8 in some workdays in which these employees were required by DEFENDANT to work ten (10)
9 hours of work from time to time. As a result, PLAINTIFF and other members of the
10 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

20
21 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

20 **SIXTH CAUSE OF ACTION**

21 **FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

22 **(Cal. Lab. Code §§ 2802)**

23 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all
24 Defendants)**

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

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

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

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

23 96. PLAINTIFF therefore demandS reimbursement for expenditures or losses
24 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
25 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

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

8 98. Cal. Labor Code § 226 provides that an employer must furnish employees with
9 an “accurate itemized” statement in writing showing:

- 10 a. Gross wages earned,
- 11 b. (2) total hours worked by the employee, except for any employee whose
12 compensation is solely based on a salary and who is exempt from payment
13 of overtime under subdivision (a) of Section 515 or any applicable order
14 of the Industrial Welfare Commission,
- 15 c. the number of piecerate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis,
- 17 d. all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item,
- 19 e. net wages earned,
- 20 f. the inclusive dates of the period for which the employee is paid,
- 21 g. the name of the employee and his or her social security number, except that by
22 January 1, 2008, only the last four digits of his or her social security number of
23 an employee identification number other than social security number may be
24 shown on the itemized statement,
- 25 h. the name and address of the legal entity that is the employer, and
- 26 i. all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.
- 28

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

12 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
13 § 226, causing injury and damages to PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
15 expended calculating the correct wages for all missed meal and rest breaks and the amount of
16 employment taxes which were not properly paid to state and federal tax authorities. These
17 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
19 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
20 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
21 amount according to proof at the time of trial (but in no event more than four thousand dollars
22 (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-
23 CLASS herein).

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EIGHTH CAUSE OF ACTION

FOR FAILURE TO TIMELY PAY WAGES WHEN DUE

(Cal. Lab. Code §§ 201, 202, 203)

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

101. 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.

102. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

1 105. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
2 SUB-CLASS Members’ employment contract.

3 106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

9 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
10 CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed
11 as required by law.

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

18
19 **NINTH CAUSE OF ACTION**

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

21 **(Cal. Lab. Code §§ 2698 et seq.)**

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

23 109. PLAINTIFFS reallege and incorporates by this reference, as though fully set
24 forth herein, the prior paragraphs of this Complaint.

25 110. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
27 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
28 fundamentally a law enforcement action designed to protect the public and not to benefit private

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees in California during the time period of August 7, 2019 until
12 the present (the "AGGRIEVED EMPLOYEES").

13 112. On December 14, 2020, PLAINTIFF gave written notice by certified mail to the
14 Labor and Workforce Development Agency (the "Agency") and the employer of the
15 specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 113. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
24 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
25 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
26 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
27 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
28 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
 - f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and
 - g. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

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4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: December 28, 2020

ZAKAY LAW GROUP, APLC

By: 


Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: December 28, 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



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Jean-Claude Lapuyade, Esq.
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December 14, 2020

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

KEYES MOTORS, INC. dba KEYES LEXUS
c/o Kevin D. Hochmann
5855 Van Nuys Blvd.
Van Nuys, CA 91401
Via Certified Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our office represents Plaintiff ELIDETH CARBAJAL (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KEYES MOTORS, INC. dba KEYES LEXUS (“Defendant”). Plaintiff was employed by Defendant in California from November 2018 to October 2020 as a salesperson entitled to overtime pay and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime, and failed to provide meal breaks and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, 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, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 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.

The action consists of, and Plaintiff is seeking to pursue these claims on behalf of, all non-exempt and exempt employees, all of which are the aggrieved employees.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* 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 Statue 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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **ZAKAY LAW GROUP, APLC**
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2 3990 Old Town Avenue, Suite C204
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3 Telephone: (619)255-9047
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5 **JCL LAW FIRM, APC**
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6 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
7 Telephone: (619)599-8292
8 Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12
13 ELIDETH CARBAJAL, an individual, on
14 behalf of herself and on behalf of all persons
similarly situated and the State of California,

15 Plaintiff,

16 v.

17 KEYES MOTORS, INC. dba KEYES
18 LEXUS; a California Corporation; and
DOES 1-50, Inclusive,

19 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §1197, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et se*.
- 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;

DEMAND FOR A JURY TRIAL

1 Plaintiff ELIDETH CARBAJAL (“PLAINTIFF” or “PLAINTIFFS”), an
2 individual, on behalf of herself and all other similarly situated current and former
3 employees, alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant KEYES MOTORS INC. dba KEYES LEXUS (“DEFENDANT”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT owns and operates a car dealership in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from November
11 2018 to October 2020 and was at all times during her employment with DEFENDANT
12 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to
13 the legally required meal and rest periods and payment of minimum and overtime wages due for
14 all time worked..

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

21 5. PLAINTIFF brings this Class Action on behalf of herself 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 PLAINTIFF and the other members
27 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA named
28 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal
2 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 PLAINTIFFS who therefore sues these Defendants by such fictitious names
6 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
7 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
10 are 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. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. DEFENDANT required
25 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
26 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
27 work during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was
28 from time to time interrupted by work assignments while what should have been PLAINTIFF's
off-duty meal break. Indeed there were days where PLAINTIFF did not even receive a partial

1 lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum
2 wage and overtime compensation by working without their time being accurately recorded and
3 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
4 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
5 for all time worked is evidenced by DEFENDANT's business records.

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other CALIFORNIA CLASS Members were required to perform work from time to time as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
13 which these employees are required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
15 without additional compensation and in accordance with DEFENDANT's strict corporate policy
16 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
17 production levels for each employee.

18 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS Members were also required from time to time 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 from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers.

1 11. State law provides that employees must be paid overtime at one-and-one-half
2 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

19 13. DEFENDANT as a matter of corporate policy, practice and procedure,
20 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
21 the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

3 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
8 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
9 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
10 were not limited to, costs related to the use of their personal cellular phones and travel with their
11 personal vehicles, on behalf of and for the benefit of DEFENDANT.

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

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
27 missed meal and rest periods and all wages due to them. This uniform policy and practice of
28 DEFENDANT was intended to purposefully avoid the payment for all time worked as required

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

5 17. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
8 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
9 calculate and record all missed meal and rest periods and all wages due to PLAINTIFF and
10 other CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal
11 and rest break wages and all other wages due to them is the DEFENDANT’s burden. As a result
12 of DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT
13 failed to properly calculate and/or pay all required compensation for work performed by the
14 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
15 promulgated thereunder as herein alleged.

16 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
18 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
19 did not have a policy or practice which provides timely off-duty meal and rest breaks to
20 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
21 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of
22 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
24 DEFENDANT’s business records. DEFENDANT also failed to pay PLAINTIFF earned
25 commission wages upon termination of employment with DEFENDANT. To date,
26 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
27 failed to pay any penalties owed to her under California Labor Code Section 203. The amount in
28 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

1 **JURISDICTION AND VENUE**

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

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

12
13 **THE CALIFORNIA CLASS**

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

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

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

1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

14 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
20 in place company policies, practices and procedures that uniformly and
21 systematically failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages owed and
23 overtime wages owed for work performed by these employees;
- 24 b. Committing an act of unfair competition in violation of the UCL, by failing
25 to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
26 with the legally required meal and rest periods; and,
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.

1 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members with necessary expenses incurred in the discharge of their job
3 duties.

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

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

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

12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
14 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
15 scheme who was subjected to the DEFENDANT's deceptive practice and policy
16 which failed to provide the legally required meal and rest periods to the
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to
18 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
19 injury as a result of DEFENDANT's employment practices. PLAINTIFFS and
20 the members of the CALIFORNIA CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and,

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

28. 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:
 - i. 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;
 - ii. 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 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 seek 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;

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

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

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

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

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

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

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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.

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 31. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
20 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
22 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
23 to the filing of the complaint and ending on the date as determined by the Court (the
24 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
25 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order

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

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

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

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

- 21 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
22 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
23 missed meal and rest breaks in violation of the California Labor Code and
24 California regulations and the applicable California Wage Order;
- 25 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
26 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
27 statements;

- 1 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 2 conduct;
- 3 d. The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and,
- 5 e. Whether DEFENDANT's conduct was willful.

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

- 8 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
- 9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all
- 10 wages due for overtime worked, for which DEFENDANT is liable pursuant to
- 11 Cal. Lab. Code § 1194;
- 12 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 14 the correct minimum wage pay for which DEFENDANT is liable pursuant to
- 15 Cal. Lab. Code §§ 1194 and 1197;
- 16 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 17 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 18 statement in writing showing the corresponding correct amount of wages earned
- 19 by the employee;
- 20 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
- 21 and the other members of the CALIFORNIA CLASS with all legally required
- 22 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 23 paid rest breaks;
- 24 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 25 CALIFORNIA CLASS members with necessary expenses incurred in the
- 26 discharge of their job duties; and,
- 27 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 28 employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment
2 and/or restitution of wages owed or in the manner required by California law to
3 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
4 their employment.

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

- 7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
9 is impracticable and the disposition of their claims as a class will benefit the
10 parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
13 CLASS and will apply uniformly to every member of the CALIFORNIA
14 LABOR SUB-CLASS;
- 15 c. The claims of the representative PLAINTIFFS are typical of the claims of each
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
17 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
18 employee paid on an hourly basis who was subjected to the DEFENDANT'S
19 practice and policy which failed to pay the correct amount of wages due to the
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
21 as a result of DEFENDANT'S employment practices. PLAINTIFFS and the
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
24 of misconduct engaged in by DEFENDANT; and
- 25 d. The representative PLAINTIFFS will fairly and adequately represent and protect
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation. There are
28 no material conflicts between the claims of the representative PLAINTIFFS and

1 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
4 Members.

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

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

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

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

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

26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

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

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

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

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

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

39. 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. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

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

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

23 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

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

5 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
9 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
10 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
11 competition, including restitution of wages wrongfully withheld.

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

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

27 46. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
28 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

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

7 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
9 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
10 for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
14 was not timely provided as required by law.

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

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

26 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14
15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all
19 Defendants)**

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

23 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
27 Members.

28 57. 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.

1 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
3 than the minimum so fixed is unlawful.

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

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

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

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

22 63. 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 the correct minimum wage compensation for their time worked for DEFENDANT.

25 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
26 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
27 than they were entitled to, constituting a failure to pay all earned wages.

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1 65. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for the true time they worked, PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
5 injury in amounts which are presently unknown to them and which will be ascertained
6 according to proof at trial.

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

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

22 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
25 the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§
28 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties

1 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
2 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR
4 SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME COMPENSATION**
8 **(Cal. Lab. Code §§510, et seq.)**
9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
10 **against all Defendants)**

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

14 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
16 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
17 pay these employees for all overtime worked, including, work performed in excess of eight (8)
18 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
19 workweek.

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

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

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

1 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
3 DEFENDANT and were not paid for all the time they worked, including overtime work.

4 75. DEFENDANT's uniform pattern of unlawful wage and hour practices
5 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
6 whole, as a result of implementing a uniform policy and practice that failed to accurately record
7 overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and
8 denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess
10 of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
11 in any workweek.

12 76. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
15 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
16 California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
19 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
20 receive full compensation for overtime worked.

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

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

4 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

11 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true amount of time they worked, PLAINTIFF 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 82. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
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 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
23 overtime worked.

24 83. 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 overtime worked and provide them with the requisite overtime compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of
2 depriving them of their property and legal rights, and otherwise causing them injury in order to
3 increase company profits at the expense of these employees.

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

15
16 **FOURTH CAUSE OF ACTION**

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

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

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

24 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
3 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
6 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
7 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
8 in some workdays in which these employees were required by DEFENDANT to work ten (10)
9 hours of work from time to time. As a result, PLAINTIFF and other members of the
10 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

20
21 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

23 96. PLAINTIFF therefore demandS reimbursement for expenditures or losses
24 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
25 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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28

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

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

8 98. Cal. Labor Code § 226 provides that an employer must furnish employees with
9 an “accurate itemized” statement in writing showing:

- 10 a. Gross wages earned,
- 11 b. (2) total hours worked by the employee, except for any employee whose
12 compensation is solely based on a salary and who is exempt from payment
13 of overtime under subdivision (a) of Section 515 or any applicable order
14 of the Industrial Welfare Commission,
- 15 c. the number of piecerate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis,
- 17 d. all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item,
- 19 e. net wages earned,
- 20 f. the inclusive dates of the period for which the employee is paid,
- 21 g. the name of the employee and his or her social security number, except that by
22 January 1, 2008, only the last four digits of his or her social security number of
23 an employee identification number other than social security number may be
24 shown on the itemized statement,
- 25 h. the name and address of the legal entity that is the employer, and
- 26 i. all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.
- 28

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

12 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
13 § 226, causing injury and damages to PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
15 expended calculating the correct wages for all missed meal and rest breaks and the amount of
16 employment taxes which were not properly paid to state and federal tax authorities. These
17 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
19 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
20 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
21 amount according to proof at the time of trial (but in no event more than four thousand dollars
22 (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-
23 CLASS herein).

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EIGHTH CAUSE OF ACTION

FOR FAILURE TO TIMELY PAY WAGES WHEN DUE

(Cal. Lab. Code §§ 201, 202, 203)

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

101. 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.

102. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees in California during the time period of August 7, 2019 until
12 the present (the "AGGRIEVED EMPLOYEES").

13 112. On August 7, 2020, PLAINTIFF gave written notice by certified mail to the
14 Labor and Workforce Development Agency (the "Agency") and the employer of the
15 specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 113. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
24 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
25 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
26 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
27 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
28 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
 - f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and
 - g. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

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4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1