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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DAVID EZELL, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiffs,

v.

DIAB LEASING, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

FILED
Superior Court Of California,
Sacramento
07/30/2021
Istewart1
By _____, Deputy
Case Number:
34-2021-00305329

VIA FAX

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN VIOLATION
3 OF CAL. LAB. CODE §§226 and 226.2;
4 7) FAILURE TO REIMBURSE EMPLOYEES
5 FOR REQUIRED EXPENSES IN
6 VIOLATION OF CAL. LAB. CODE § 2802;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203;
9 9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

10 Plaintiff David Ezell, an individual, ("PLAINTIFF" and/or "PLAINTIFFS"), on behalf of
11 himself and all other similarly situated current and former employees, alleges on information
12 and belief, except for his own acts and knowledge which are based on personal knowledge, the
13 following:

PRELIMINARY ALLEGATIONS

14 1. Defendant DIAB LEASING, INC. ("DEFENDANT" and/or "DEFENDANTS")
15 is a California Corporation and at all relevant times mentioned herein conducted and continues to
16 conduct substantial and regular business throughout California.

17 2. DEFENDANT operates Wienerschnitzel franchises throughout California,
18 including in Sacramento County, California locations where PLAINTIFF worked.

19 3. Plaintiff Ezell was employed by DEFENDANT in California as a non-exempt
20 employee entitled to minimum wages, overtime pay and meal and rest periods from October 2020
21 to March 2021.

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

1 5. PLAINTIFF brings this Class Action on behalf of themselves and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS'
5 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
6 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other
7 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
8 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,
9 relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who
10 have been economically injured by DEFENDANT'S past and current unlawful conduct, and all
11 other appropriate legal and equitable relief.

12 6. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
18 allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and after the beginning of her shift, spending time under DEFENDANTS' control for which they were not compensated, including time spent before their shift started and after it ended. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal breaks to complete tasks for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period each workday in which these employees were required by DEFENDANTS to work ten (10) hours of work. DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed to be their off-duty meal periods. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

1 10. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied their
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
6 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
7 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
8 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
9 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
10 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
11 remain on-duty and on-call and subject to DEFENDANTS' control in accordance with
12 DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
13 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and
14 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
15 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and
16 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
17 DEFENDANTS and DEFENDANTS' managers.

18 11. Under California law, every employer shall pay to each employee, on the
19 established payday for the period involved, not less than the applicable minimum wage for all
20 hours worked in the payroll period, whether the remuneration is measured by time, piece,
21 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
22 during which an employee is subject to the control of an employer and includes all the time the
23 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and
24 other CALIFORNIA CLASS Members were from time to time required to perform work for
25 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
26 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
27 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.

1 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
2 the applicable minimum wage for all hours worked in a payroll period.

3 12. In violation of the applicable sections of the California Labor Code and the
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
5 matter of company policy, practice and procedure, intentionally and knowingly failed to
6 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
7 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
8 the payment of the correct compensation as required by California law which allowed
9 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
10 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
11 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

12 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
13 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
14 DEFENDANT miscalculated PLAINTIFF'S and other CALIFORNIA CLASS Members' regular
15 rate of pay, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
17 other things, the correct time worked, including, work performed in excess of eight (8) hours in a
18 workday and/or forty (40) hours in any workweek, and the gross wages paid for those periods
19 during the pay period, and the correct penalty payments or missed meal and rest periods in
20 violation of California Labor Code Sections 226 and 226.2.

21 14. California Labor Code Section 226 requires an employer to furnish its employees
22 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
23 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
24 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
25 of the employee and only the last four digits of the employee's social security number or an
26 employee identification number other than a social security number, (8) the name and address of
27 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate by the employee.

1 15. Aside from the violations listed herein, DEFENDANT failed to issue to
2 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
3 Code 226 *et seq.* Specifically, DEFENDANT failed to include the complete address of the legal
4 entity that is the employer. As a result, from time to time DEFENDANT provided PLAINTIFFS
5 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
6 Lab. Code § 226.

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

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

1 18. By reason of this uniform conduct applicable to PLAINTIFFS and all
2 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
4 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately pay for
5 all time worked by PLAINTIFFS and other CALIFORNIA CLASS Members. As a result of
6 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS
7 failed to properly calculate and/or pay all required compensation for work performed by the
8 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
9 promulgated thereunder as herein alleged.

10 19. Specifically, as to PLAINTIFF, PLAINTIFF were from time to time unable to take
11 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
12 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
13 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
14 provide PLAINTIFF with a second off-duty meal period each workday in which they were
15 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
16 PLAINTIFF with a rest break, it required PLAINTIFF to remain on-duty and on-call for the rest
17 break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call and on-duty during what
18 was supposed to be their off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
19 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate
20 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that
21 failed to accurately display PLAINTIFF’S employer’s address, the correct time worked and
22 wages, as well as payments for missed meal and rest periods for certain pay periods in violation
23 of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the
24 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
25 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of
26 \$75,000.

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1 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
2 this work and permitted or suffered to permit this work.

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

13 26. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 27. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
18 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
19 policies, practices and procedures that failed to pay all wages due the
20 CALIFORNIA CLASS for all time worked;
- 21 b. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
24 members;
- 25 c. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
27 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
28 members with necessary expenses incurred in the discharge of their job duties; and

1 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that uniformly and systematically
4 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
5 CLASS for all time worked, including minimum wages owed and overtime wages
6 owed for work performed by these employees.

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

- 9 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
10 joinder of all such persons is impracticable and the disposition of their claims as a
11 class will benefit the parties and the Court;
- 12 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
13 raised in this Complaint are common to the CALIFORNIA CLASS will apply
14 uniformly to every member of the CALIFORNIA CLASS;
- 15 c. The claims of the representative PLAINTIFF are typical of the claims of each
16 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
17 the CALIFORNIA CLASS, were classified as a non-exempt employee paid on an
18 hourly basis who was subjected to the DEFENDANTS' deceptive practice and
19 policy which failed to provide the legally required meal and rest periods to the
20 CALIFORNIA CLASS and thereby systematically underpaid compensation to
21 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic
22 injury as a result of DEFENDANTS' employment practices. PLAINTIFF, like all
23 the other members of the CALIFORNIA CLASS, were subjected to the uniform
24 employment practices of DEFENDANTS and was a non-exempt employee paid
25 on an hourly basis and paid additional non-discretionary incentive wages who was
26 subjected to the DEFENDANTS' practice and policy which failed to pay the
27 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
28 worked by the CALIFORNIA CLASS and thereby systematically under pays

1 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
2 members of the CALIFORNIA CLASS were and are similarly or identically
3 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
4 misconduct engaged in by DEFENDANTS; and

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

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

- 14 a. Without class certification and determination of declaratory, injunctive, statutory
15 and other legal questions within the class format, prosecution of separate actions
16 by individual members of the CALIFORNIA CLASS will create the risk of:
- 17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA CLASS which would establish incompatible
19 standards of conduct for the parties opposing the CALIFORNIA CLASS;
20 and/or;
- 21 ii. Adjudication with respect to individual members of the CALIFORNIA
22 CLASS which would as a practical matter be dispositive of interests of the
23 other members not party to the adjudication or substantially impair or
24 impede their ability to protect their interests.
- 25 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
26 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
27 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
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1 DEFENDANT uniformly failed to pay all wages due for all time worked by the
2 members of the CALIFORNIA CLASS as required by law;

3 i. With respect to the First Cause of Action, the final relief on behalf of the
4 CALIFORNIA CLASS sought does not relate exclusively to restitution
5 because through this claim PLAINTIFF seek declaratory relief holding that
6 the DEFENDANTS' policy and practices constitute unfair competition,
7 along with declaratory relief, injunctive relief, and incidental equitable
8 relief as may be necessary to prevent and remedy the conduct declared to
9 constitute unfair competition;

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

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

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

- 24 1. Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS, which would establish
26 incompatible standards of conduct for the DEFENDANTS; and/or;
27 2. Adjudications with respect to individual members of the
28 CALIFORNIA CLASS would as a practical matter be dispositive

1 of the interests of the other members not parties to the adjudication
2 or substantially impair or impede their ability to protect their
3 interests;

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

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

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

17 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
18 over any question affecting only individual CALIFORNIA CLASS Members
19 because the DEFENDANTS' employment practices are uniform and
20 systematically applied with respect to the CALIFORNIA CLASS.

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

26 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
27 to bring all members of the CALIFORNIA CLASS before the Court;
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- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
2 obtain effective and economic legal redress unless the action is maintained as a
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANTS are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
12 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
13 with respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANTS; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an
17 efficient and rapid conclusion to all litigation of all wage and hour related claims
18 arising out of the conduct of DEFENDANTS as to the members of the
19 CALIFORNIA CLASS.

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 32. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
27 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
28 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-

1 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
2 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
3 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
4 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
5 (\$5,000,000.00).

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

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

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

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

- 27 a. Whether DEFENDANTS unlawfully failed to pay compensation due to members
28 of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest breaks in

- 1 violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;
- 3 b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
4 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
5 thirty (30) minute meal breaks and rest periods;
- 6 c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
7 of the CALIFORNIA LABOR SUB-CLASS with complete and accurate itemized
8 wage statements;
- 9 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
10 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
11 California Labor Code and California regulations and the applicable California
12 Wage Order;
- 13 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
14 compensation for time worked, including overtime worked, under the overtime
15 pay requirements of California law;
- 16 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
17 conduct;
- 18 g. The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and
- 20 h. Whether DEFENDANTS' conduct was willful.
- 21 37. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
22 under California law by:
- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS
24 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
25 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
26 § 1194;
- 27 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

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

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

6 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
8 statement in writing showing the address of the legal entity that is PLAINTIFF's
9 employer, all accurate rates in effect during the pay period and the corresponding
10 amount of time worked at each overtime rate by the employee;

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

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

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

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

26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
28

1 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
2 CLASS;

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

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

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

24 a. Without class certification and determination of declaratory, injunctive, statutory
25 and other legal questions within the class format, prosecution of separate actions
26 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
27 the risk of:
28

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or substantially
8 impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
13 failed to pay all wages due for all time worked by the members of the
14 CALIFORNIA LABOR SUB-CLASS as required by law;
- 15 c. Common questions of law and fact predominate as to the members of the
16 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
17 of California Law as listed above, and predominate over any question affecting
18 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
19 Action is superior to other available methods for the fair and efficient adjudication
20 of the controversy, including consideration of:
- 21 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
22 in individually controlling the prosecution or defense of separate actions in
23 that the substantial expense of individual actions will be avoided to recover
24 the relatively small amount of economic losses sustained by the individual
25 CALIFORNIA LABOR SUB-CLASS Members when compared to the
26 substantial expense and burden of individual prosecution of this litigation;
- 27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to individual
- 2 members of the CALIFORNIA LABOR SUB-CLASS, which
- 3 would establish incompatible standards of conduct for the
- 4 DEFENDANTS; and/or,
- 5 2. Adjudications with respect to individual members of the
- 6 CALIFORNIA LABOR SUB-CLASS would as a practical matter
- 7 be dispositive of the interests of the other members not parties to
- 8 the adjudication or substantially impair or impede their ability to
- 9 protect their interests;
- 10 iii. In the context of wage litigation because a substantial number of individual
- 11 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
- 12 legal rights out of fear of retaliation by DEFENDANTS, which may
- 13 adversely affect an individual's job with DEFENDANTS or with a
- 14 subsequent employer, the Class Action is the only means to assert their
- 15 claims through a representative; and,
- 16 iv. A class action is superior to other available methods for the fair and
- 17 efficient adjudication of this litigation because class treatment will obviate
- 18 the need for unduly and unnecessary duplicative litigation that is likely to
- 19 result in the absence of certification of this action pursuant to Cal. Code of
- 20 Civ. Proc. § 382.
- 21 40. This Court should permit this action to be maintained as a Class Action pursuant
- 22 to Cal. Code of Civ. Proc. § 382 because:
- 23 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
- 24 CLASS predominate over any question affecting only individual CALIFORNIA
- 25 LABOR SUB-CLASS Members;
- 26 b. A Class Action is superior to any other available method for the fair and efficient
- 27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
- 28 CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on their
3 employment;

4 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
6 before the Court;

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
8 not be able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable relief
11 for the acts of unfair competition, statutory violations and other improprieties, and
12 in obtaining adequate compensation for the damages and injuries which
13 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
14 CLASS;

15 f. There is a community of interest in ensuring that the combined assets of
16 DEFENDANTS are sufficient to adequately compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
19 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

21 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
24 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
25 PERIOD; and

26 i. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
28

1 arising out of the conduct of DEFENDANTS as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

10 42. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

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

23 44. By the conduct alleged herein, DEFENDANTS have engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 201, 202, 203, 204, 206.5, 246, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
27 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
28

1 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
2 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

9 46. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
11 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
12 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
13 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
14 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
15 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
16 wrongfully withheld.

17 47. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
18 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANTS.

21 48. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
22 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

27 62. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

1 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
3 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
4 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
5 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
7 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

18 75. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
19 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
20 amount of overtime worked. As set forth herein, DEFENDANTS' uniform policy and practice
21 was to unlawfully and intentionally deny timely payment of wages due for the overtime worked
22 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
23 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for
24 all overtime worked.

25 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
27 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,

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

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

9 78. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
11 full compensation for all overtime worked.

12 79. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
13 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
16 bargaining agreement that would preclude the causes of action contained herein this Complaint.
17 Rather, PLAINTIFF bring this Action on behalf of themselves and the CALIFORNIA LABOR
18 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
19 provided by the State of California.

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

23 81. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
26 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
28

1 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
2 business records and witnessed by employees.

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

8 83. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
10 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
12 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
14 overtime rate.

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

23 85. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'

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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

27 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a meal period, in accordance with the applicable Wage
2 Order, one additional hour of compensation at each employee's regular rate of pay for each
3 workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

15 91. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
16 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
17 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
18 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
19 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
20 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
22 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
23 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
24 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
25 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
26 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
27 DEFENDANTS' premises for those rest breaks.

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

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

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

11 **(Cal. Lab. Code §§ 226 and 226.2)**

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

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

17 95. Cal. Labor Code § 226 provides that an employer must furnish employees with an
18 "accurate itemized" statement in writing showing:

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

- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

96. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an "accurate itemized" statement in writing showing:

- a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and
- b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

97. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' wages, including overtime wages, owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANT failed to include the address of the legal entity that is the employer, thereby violating Cal. Lab.

1 Code § 226. As a result, from time to time DEFENDANTS provided PLAINTIFF and the other
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
3 226.

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

15 **SEVENTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

24
25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
28 though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

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

18 102. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
19 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
20 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
21 at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

9 104. Cal. Lab. Code § 200 provides that:

10
11 As used in this article:(a) "Wages" includes all amounts for labor performed by
12 employees of every description, whether the amount is fixed or ascertained by the
13 standard of time, task, piece, Commission basis, or other method of calculation. (b)
14 "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.

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

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

19 If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72 hours
21 thereafter, unless the employee has given 72 hours previous notice of his or her
22 intention to quit, in which case the employee is entitled to his or her wages at the
23 time of quitting. Notwithstanding any other provision of law, an employee who
24 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.

25 107. There was no definite term in Plaintiff Haznedar's or any CALIFORNIA LABOR
26 SUB-CLASS Members' employment contract.

27 108. Cal. Lab. Code § 203 provides:

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

6 109. The employment of Plaintiff and many CALIFORNIA LABOR SUB-CLASS
7 Members terminated and DEFENDANTS have not tendered payment of wages, to these
8 employees who missed meal and rest breaks, as required by law.

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

15 **NINTH CAUSE OF ACTION**

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

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

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

19 111. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

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

1 113. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of May 25, 2020 until
6 the present (the "AGGRIEVED EMPLOYEES").

7 114. On May 25, 2021, PLAINTIFF gave written notice by certified mail to the Labor
8 and Workforce Development Agency (the "Agency") and the employer of the specific
9 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
10 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
11 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
12 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
13 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
14 EMPLOYEES as herein defined.

15 115. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANTS (a) failed to properly record and pay
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
18 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
19 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
20 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
21 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
22 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,
23 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to
24 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
25 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
26 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
27 the other AGGRIEVED EMPLOYEES.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly
3 and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum wages, overtime wages, unreimbursed expenses, and other
21 compensation due to PLAINTIFFS and the other members of the CALIFORNIA
22 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
23 CLASS PERIOD plus interest thereon at the statutory rate;
24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
25 the applicable IWC Wage Order;
26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226; and,

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

6 3. On behalf of the State of California and with respect to all AGGRIEVED
7 EMPLOYEES:

8 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
9 General Act of 2004

10 4. On all claims:

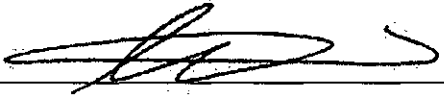
11 a. An award of interest, including prejudgment interest at the legal rate;

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

13 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
14 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
15 and/or §2802.

16
17 DATED: July 29, 2021

18
19 ZAKAY LAW GROUP, APLC

20 By: 

21 Shani O. Zakay
22 Attorney for Plaintiff
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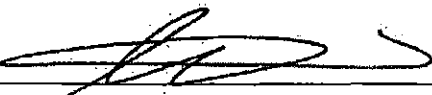
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DEMAND FOR A JURY TRIAL

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

DATED: July 29, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiff

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