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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

GENEVA PUTMAN, on behalf of herself and
on behalf of all persons similarly situated,

Plaintiffs,

v.

WINCO HOLDINGS, INC, an Idaho
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
08/09/2021
rcaddick
By _____, Deputy
Case Number:
34-2021-00305825

VIA FAX

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- 6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE §§226 and 226.2;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203;
8) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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Plaintiff Geneva Putman, an individual, ("PLAINTIFF"), on behalf of herself and all other
similarly situated current and former employees, alleges on information and belief, except for her
own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

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1. Defendant WINCO HOLDINGS, INC. ("DEFENDANT" or "DEFENDANTS")
is Corporation and at all relevant times mentioned herein conducted and continues to conduct
substantial and regular business throughout California.

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2. DEFENDANTS operate a supermarket chain with locations throughout California,
including in Sacramento, California location where PLAINTIFF worked.

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3. PLAINTIFF has been employed by DEFENDANTS in California as a non-exempt
employee entitled to minimum wages, overtime pay and meal and rest periods since 2008.

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4. PLAINTIFF brings this Class Action on behalf of herself and 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 the 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).

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5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
the CALIFORNIA CLASS PERIOD caused by DEFENDANT uniform policy and practice which
failed to lawfully compensate these employees for all their time worked. DEFENDANTS'

uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

1 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
2 the time they were under DEFENDANT control. Specifically, from time to time, PLAINTIFF
3 performed work before and after the beginning of her shift, as well as during what was supposed
4 to be her duty-free meal breaks, spending time under the DEFENDANT control for which she
5 was not compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members
6 forfeited minimum wage and overtime compensation by regularly working without their time
7 being accurately recorded and without compensation at the applicable minimum wage and
8 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
9 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
10 records.

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

24 10. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
25 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
26 without being provided ten (10) minute rest periods. Further, these employees were denied their
27 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
28 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between

1 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
2 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
3 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
4 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
5 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
6 remain on-duty, on-call, and subject to DEFENDANTS' control in accordance with
7 DEFENDANTS' policy. Additionally, DEFENDANTS required PLAINTIFF and the
8 CALIFORNIA CLASS Members to ask for permission before they were allowed to leave the
9 premises for their rest breaks, further evidencing DEFENDANTS' control in accordance with
10 DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
11 provided with one-hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and
12 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
13 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and
14 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
15 DEFENDANTS and DEFENDANTS' managers.

16 11. Under California law, every employer shall pay to each employee, on the
17 established payday for the period involved, not less than the applicable minimum wage for all
18 hours worked in the payroll period, whether the remuneration is measured by time, piece,
19 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
20 during which an employee is subject to the control of an employer and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
22 other CALIFORNIA CLASS Members were from time to time required to perform work for
23 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
24 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
25 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
26 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
27 the applicable minimum wage for all hours worked in a payroll period.
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1 12. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
3 matter of company policy, practice and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
5 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
6 the payment of the correct compensation as required by California law which allowed
7 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
8 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
9 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

26 15. Aside from the violations listed herein, DEFENDANTS failed to issue to
27 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
28 Code 226 *et seq.* Specifically, DEFENDANTS violated Cal. Lab. Code Sections 226(a)(2) by

1 issuing itemized wage statements with the incorrect number of hours worked. Specifically,
2 DEFENDANTS included items, including but not limited to, “Vacation” and “Holiday” into the
3 total hours worked. However, the foregoing items are not considered total hours worked for
4 purposes of California Labor Code Section 226(a)(2). Further, with respect to Cal. Lab. Code §
5 226(a)(2), DEFENDANTS issued itemized wage statements to PLAINTIFF and the other
6 members of the CALIFORNIA CLASS that included two separate remunerations for overtime
7 compensation: “OT Premium 50%” and “Day Overtime.” Accordingly, DEFENDANTS’
8 inclusion of two separate remunerations for overtime compensation also resulted in a failure to
9 include the accurate total amount of hours worked pursuant to Cal. Lab. Code § 226(a)(2). As a
10 result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

12 16. By reason of this uniform conduct applicable to PLAINTIFF and all
13 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
14 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
15 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
16 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
17 CLASS Members. The proper recording of these employees’ missed meal and rest breaks, and
18 proper payment of minimum wages and overtime, is the DEFENDANTS’ burden. As a result of
19 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS
20 failed to properly pay all required compensation for work performed by the members of the
21 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
22 thereunder as herein alleged.

23 17. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
24 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
25 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
26 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
27 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
28 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF

1 with a rest break, they required PLAINTIFF to on-duty and on-call, for the rest break. PLAINTIFF
2 therefore forfeited meal and rest breaks without additional compensation and in accordance with
3 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
4 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's total number of hours
5 worked, in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid
6 PLAINTIFF the overtime compensation still owed to her or any penalty wages owed to her under
7 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
8 the sum or value of \$75,000.

9 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

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

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

4 22. DEFENDANTS, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
8 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
10 this work and permitted or suffered to permit this work.

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

21 24. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 25. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
24 California law by:

- 25 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
27 policies, practices and procedures that failed to pay all wages due the
28 CALIFORNIA CLASS for all time worked;

- 1 b. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
4 members; and,
- 5 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
7 company policies, practices and procedures that uniformly and systematically
8 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
9 CLASS for all time worked, including minimum wages owed and overtime wages
10 owed for work performed by these employees.

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

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

1 on an hourly basis and paid additional non-discretionary incentive wages who was
2 subjected to the DEFENDANTS' practice and policy which failed to pay the
3 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
4 worked by the CALIFORNIA CLASS and thereby systematically under pays
5 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
6 members of the CALIFORNIA CLASS were and are similarly or identically
7 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
8 misconduct engaged in by DEFENDANTS; and

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

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

- 18 a. Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA CLASS will create the risk of:
- 21 i. Inconsistent or varying adjudications with respect to individual members
22 of the CALIFORNIA CLASS which would establish incompatible
23 standards of conduct for the parties opposing the CALIFORNIA CLASS;
24 and/or;
- 25 ii. Adjudication with respect to individual members of the CALIFORNIA
26 CLASS which would as a practical matter be dispositive of interests of the
27 other members not party to the adjudication or substantially impair or
28 impede their ability to protect their interests.

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

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

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

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

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

- 1 1. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA CLASS, which would establish
3 incompatible standards of conduct for the DEFENDANTS; and/or;
4 2. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be dispositive
6 of the interests of the other members not parties to the adjudication
7 or substantially impair or impede their ability to protect their
8 interests;
- 9 iii. In the context of wage litigation, because a substantial number of
10 individual CALIFORNIA CLASS Members will avoid asserting their legal
11 rights out of fear of retaliation by DEFENDANTS, which may adversely
12 affect an individual's job with DEFENDANTS or with a subsequent
13 employer, the Class Action is the only means to assert their claims through
14 a representative; and
- 15 iv. A class action is superior to other available methods for the fair and
16 efficient adjudication of this litigation because class treatment will obviate
17 the need for unduly and unnecessary duplicative litigation that is likely to
18 result in the absence of certification of this action pursuant to Cal. Code of
19 Civ. Proc. § 382.
- 20 28. The Court should permit this action to be maintained as a Class Action pursuant
21 to Cal. Code of Civ. Proc. § 382 because:
- 22 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
23 over any question affecting only individual CALIFORNIA CLASS Members
24 because the DEFENDANTS' employment practices are uniform and
25 systematically applied with respect to the CALIFORNIA CLASS.
- 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 CLASS because
28 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 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

31. DEFENDANTS, 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 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

27

28

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS

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

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

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

37. 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 LABOR SUB-CLASS will create the risk of:

- 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 38. 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

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

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

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

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

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

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

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

3 43. 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 44. 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 45. 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 46. 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 47. Therefore, PLAINTIFF demands on behalf of herself 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 48. PLAINTIFF further demands on behalf of herself 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 49. 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 50. 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 51. 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 52. 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 53. 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
7 **DEFENDANTS)**

8 54. 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 55. 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
14 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
15 they were entitled to, constituting a failure to pay all earned wages.

16 64. 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 65. 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 66. 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 67. 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **DEFENDANTS)**

25 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
18 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
19 the State of California.

20 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
11 **DEFENDANTS)**

12 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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.

94. 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.

95. When DEFENDANTS did not accurately record PLAINTIFF’S and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS 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 overtime rate, 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, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANTS included items, including but not limited to, “Vacation” and

1 “Holiday” into the total hours worked. However, the foregoing items are not considered total
2 hours worked for purposes of California Labor Code Section 226(a)(2). Further, with respect to
3 Cal. Lab. Code § 226(a)(2), DEFENDANTS issued itemized wage statements to PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS that included two separate
5 remunerations for overtime compensation: “OT Premium 50%” and “Day Overtime.”
6 Accordingly, DEFENDANTS’ inclusion of two separate remunerations for overtime
7 compensation also resulted in a failure to include the accurate total amount of hours worked
8 pursuant to Cal. Lab. Code § 226(a)(2). Specifically, DEFENDANTS violated Cal. Lab. Code
9 Sections 226(a)(9) by issuing itemized wage statements with the incorrect number of total hours
10 worked. As a result, from time to time DEFENDANTS provided PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal.
12 Lab. Code § 226.

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

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1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

3 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
4 CLASS Members' employment contract.

5 102. Cal. Lab. Code § 203 provides:

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

12 103. 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, PLAINTIFF
14 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
15 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
16 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
17 costs as allowed by law.

18 **EIGHTH CAUSE OF ACTION**

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

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

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

22 104. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

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

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 106. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by DEFENDANT and
9 classified as non-exempt employees in California during the time period of May 31, 2020 until
10 the present (the "AGGRIEVED EMPLOYEES").

11 107. On May 31, 2021, PLAINTIFF gave written notice by certified mail to the Labor
12 and Workforce Development Agency (the "Agency") and the employer of the specific
13 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
14 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
15 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
16 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
17 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
18 EMPLOYEES as herein defined.

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

1 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
2 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
3 the other AGGRIEVED EMPLOYEES.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
6 and severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum wages, overtime wages, and other compensation due to
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
25 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
26 thereon at the statutory rate;
27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

- 1 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
2 which a violation occurs and one hundred dollars (\$100) per member of the
3 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226; and,
6 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
7 CLASS as a penalty from the due date thereof at the same rate until paid or until an
8 action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 9 3. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:
11 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
12 General Act of 2004
13 4. On all claims:
14 a. An award of interest, including prejudgment interest at the legal rate;
15 b. Such other and further relief as the Court deems just and equitable; and
16 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
17 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, and/or
18 §1197.

19
20 DATED: August 6, 2021

JCL LAW FIRM, APC

21
22 By: 

23 Jean-Claude Lapuyade
24 Attorney for Plaintiffs
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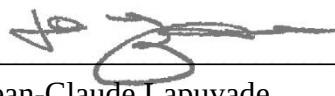
DEMAND FOR A JURY TRIAL

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

DATED: August 6, 2021

JCL LAW FIRM, APC

By: _____



Jean-Claude Lapuyade
Attorney for Plaintiffs

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 38601

May 31, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	WINCO HOLDINGS, INC. c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
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Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff GENEVA PUTMAN (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against WINCO HOLDINGS, INC. Plaintiff has been employed by Defendant in California since 2008 as a non-exempt employee, entitled to payment of all wages 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, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General 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,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Jackland K. Hom (State Bar #327243)
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San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiffs

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

GENEVA PUTMAN, on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

WINCO HOLDINGS, INC, an Idaho
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;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant WINCO HOLDINGS, INC. (“DEFENDANT” or “DEFENDANTS”)
6 is Corporation and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. DEFENDANTS operate a a supermarket chain with locations throughout
9 California, including in Sacramento, California location where PLAINTIFF worked.

10 3. PLAINTIFF has been employed by DEFENDANTS in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods since 2008.

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

19 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT uniform policy and practice which
22 failed to lawfully compensate these employees for all their time worked. DEFENDANTS’
23 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
24 whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other
25 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
26 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
27 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
28 who have been economically injured by DEFENDANTS’ past and current unlawful conduct, and
all other appropriate legal and equitable relief.

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

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

17 **THE CONDUCT**

18 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
19 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
20 meaning the time during which an employee is subject to the control of an employer, including
21 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
22 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
23 the time they were under DEFENDANT control. Specifically, from time to time, PLAINTIFF
24 performed work before and after the beginning of her shift, as well as during what was supposed
25 to be her duty-free meal breaks, spending time under the DEFENDANT control for which he was
26 not compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members
27 forfeited minimum wage and overtime compensation by regularly working without their time
28 being accurately recorded and without compensation at the applicable minimum wage and

1 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
3 records.

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

17 10. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
18 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
19 without being provided ten (10) minute rest periods. Further, these employees were denied their
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
21 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
22 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
23 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
24 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
25 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
26 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
27 on-duty, on-call, and subject to DEFENDANTS' control in accordance with DEFENDANTS'
28 policy. Additionally, DEFENDANTS required PLAINTIFF and the CALIFORNIA CLASS

1 Members to ask for permission before they were allowed to leave the premises for their rest
2 breaks, further evidencing DEFENDANTS' control in accordance with DEFENDANTS' policy.
3 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
4 wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA
5 CLASS Members to remain on-call and on-duty during what was supposed to be their off-duty
6 rest periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were periodically denied their proper rest periods by DEFENDANTS and
8 DEFENDANTS' managers.

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

21 12. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
25 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
26 the payment of the correct compensation as required by California law which allowed
27 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
28

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

3 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
4 worked during what was supposed to be their meal breaks or otherwise off the clock,
5 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA
6 CLASS with complete and accurate wage statements which failed to show, among other things,
7 the correct time worked, including, work performed in excess of eight (8) hours in a workday
8 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
9 pay period, and the correct penalty payments or missed meal and rest periods in violation of
10 California Labor Code Sections 226 and 226.2.

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

19 15. Aside from the violations listed herein, DEFENDANTS failed to issue to
20 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
21 Code 226 *et seq.* Specifically, DEFENDANTS violated Cal. Lab. Code Sections 226(a)(2) by
22 issuing itemized wage statements with the incorrect number of hours worked. As a result, from
23 time to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with wage statements which violated Cal. Lab. Code § 226.

25 16. By reason of this uniform conduct applicable to PLAINTIFF and all
26 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
27 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
28 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately

1 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
2 CLASS Members. The proper recording of these employees' missed meal and rest breaks, and
3 proper payment of minimum wages and overtime, is the DEFENDANTS' burden. As a result of
4 DEFENDANTS' intentional disregard of the obligation to meet this burden, DEFENDANTS
5 failed to properly pay all required compensation for work performed by the members of the
6 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
7 thereunder as herein alleged.

8 17. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
10 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
12 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
13 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
14 with a rest break, they required PLAINTIFF to on-duty and on-call, for the rest break. PLAINTIFF
15 therefore forfeited meal and rest breaks without additional compensation and in accordance with
16 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
17 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's total number of hours
18 worked, in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid
19 PLAINTIFF the overtime compensation still owed to his or any penalty wages owed to him under
20 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
21 the sum or value of \$75,000.

22 **JURISDICTION AND VENUE**

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

27 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANTS (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

20. PLAINTIFF brings 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 the original 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).

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

22. DEFENDANTS, 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 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work.

23. DEFENDANTS have the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks missed as required by California laws. DEFENDANTS, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This

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

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

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

- 9 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
10 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
11 policies, practices and procedures that failed to pay all wages due the
12 CALIFORNIA CLASS for all time worked;
- 13 b. Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
15 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
16 members; and,
- 17 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that uniformly and systematically
20 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
21 CLASS for all time worked, including minimum wages owed and overtime wages
22 owed for work performed by these employees.

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

- 25 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
26 joinder of all such persons is impracticable and the disposition of their claims as a
27 class will benefit the parties and the Court;
- 28

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA CLASS will apply
3 uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFF are typical of the claims of each
5 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
6 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
7 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
8 policy which failed to provide the legally required meal and rest periods to the
9 CALIFORNIA CLASS and thereby systematically underpaid compensation to
10 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
11 as a result of DEFENDANTS’ employment practices. PLAINTIFF, like all the
12 other members of the CALIFORNIA CLASS, were subjected to the uniform
13 employment practices of DEFENDANTS and was a non-exempt employee paid
14 on an hourly basis and paid additional non-discretionary incentive wages who was
15 subjected to the DEFENDANTS’ practice and policy which failed to pay the
16 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
17 worked by the CALIFORNIA CLASS and thereby systematically under pays
18 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and
- 22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who are
24 competent and experienced in Class Action litigation. There are no material
25 conflicts between the claims of the representative PLAINTIFF and the members
26 of the CALIFORNIA CLASS that would make class certification inappropriate.
27 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
28 CALIFORNIA CLASS Members.

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

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

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

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

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

19 i. With respect to the First Cause of Action, the final relief on behalf of the
20 CALIFORNIA CLASS sought does not relate exclusively to restitution
21 because through this claim PLAINTIFF seek declaratory relief holding that
22 the DEFENDANTS' policy and practices constitute unfair competition,
23 along with declaratory relief, injunctive relief, and incidental equitable
24 relief as may be necessary to prevent and remedy the conduct declared to
25 constitute unfair competition;

26 c. Common questions of law and fact exist as to the members of the CALIFORNIA
27 CLASS, with respect to the practices and violations of California law as listed
28 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 DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to

1 result in the absence of certification of this action pursuant to Cal. Code of
2 Civ. Proc. § 382.

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

- 5 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
6 over any question affecting only individual CALIFORNIA CLASS Members
7 because the DEFENDANTS' employment practices are uniform and
8 systematically applied with respect to the CALIFORNIA CLASS.
- 9 b. A Class Action is superior to any other available method for the fair and efficient
10 adjudication of the claims of the members of the CALIFORNIA CLASS because
11 in the context of employment litigation a substantial number of individual
12 CALIFORNIA CLASS Members will avoid asserting their rights individually out
13 of fear of retaliation or adverse impact on their employment;
- 14 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
15 to bring all members of the CALIFORNIA CLASS before the Court;
- 16 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
17 obtain effective and economic legal redress unless the action is maintained as a
18 Class Action;
- 19 e. There is a community of interest in obtaining appropriate legal and equitable relief
20 for the acts of unfair competition, statutory violations and other improprieties, and
21 in obtaining adequate compensation for the damages and injuries which
22 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 23 f. There is a community of interest in ensuring that the combined assets of
24 DEFENDANTS are sufficient to adequately compensate the members of the
25 CALIFORNIA CLASS for the injuries sustained;
- 26 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
27 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
28 with respect to the CALIFORNIA CLASS as a whole;

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANTS; and

3 i. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANTS as to the members of the
6 CALIFORNIA CLASS.

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

20 31. DEFENDANTS, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
24 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
25 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
26 benefit of this work, required employees to perform this work and permitted or suffered to permit
27 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
28 CLASS Members wages to which these employees are entitled in order to unfairly cheat the

1 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
2 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
3 CLASS PERIOD should be adjusted accordingly.

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

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

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

- 13 a. Whether DEFENDANTS unlawfully failed to pay compensation due to members
14 of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest breaks in
15 violation of the California Labor Code and California regulations and the
16 applicable California Wage Order;
- 17 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
19 thirty (30) minute meal breaks and rest periods;
- 20 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
22 statements;
- 23 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
24 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
25 California Labor Code and California regulations and the applicable California
26 Wage Order;

- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS' conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to

1 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
2 their employment.

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

- 5 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
6 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
7 is impracticable and the disposition of their claims as a class will benefit the parties
8 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 LABOR SUB-CLASS
11 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
12 CLASS;
- 13 c. The claims of the representative PLAINTIFF are typical of the claims of each
14 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
15 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
16 employee paid on an hourly basis and paid additional non-discretionary incentive
17 wages who was subjected to the DEFENDANTS' practice and policy which failed
18 to pay the correct rate of overtime wages and total amount of wages due to the
19 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
20 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
21 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
22 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
23 misconduct engaged in by DEFENDANTS; and
- 24 d. The representative PLAINTIFF will fairly and adequately represent and protect
25 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
26 who are competent and experienced in Class Action litigation. There are no
27 material conflicts between the claims of the representative PLAINTIFF and the
28 members of the CALIFORNIA LABOR SUB-CLASS that would make class

1 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
2 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
3 Members.

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

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

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

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

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

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

1 Action is superior to other available methods for the fair and efficient adjudication
2 of the controversy, including consideration of:

- 3 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
4 in individually controlling the prosecution or defense of separate actions in
5 that the substantial expense of individual actions will be avoided to recover
6 the relatively small amount of economic losses sustained by the individual
7 CALIFORNIA LABOR SUB-CLASS Members when compared to the
8 substantial expense and burden of individual prosecution of this litigation;
9 ii. Class certification will obviate the need for unduly duplicative litigation
10 that would create the risk of:

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

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

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

- 26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will obviate
28 the need for unduly and unnecessary duplicative litigation that is likely to

1 result in the absence of certification of this action pursuant to Cal. Code of
2 Civ. Proc. § 382.

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

- 5 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
6 CLASS predominate over any question affecting only individual CALIFORNIA
7 LABOR SUB-CLASS Members;
- 8 b. A Class Action is superior to any other available method for the fair and efficient
9 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
10 CLASS because in the context of employment litigation a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
12 their rights individually out of fear of retaliation or adverse impact on their
13 employment;
- 14 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
15 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
16 before the Court;
- 17 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
18 not be able to obtain effective and economic legal redress unless the action is
19 maintained as a Class Action;
- 20 e. There is a community of interest in obtaining appropriate legal and equitable relief
21 for the acts of unfair competition, statutory violations and other improprieties, and
22 in obtaining adequate compensation for the damages and injuries which
23 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
24 CLASS;
- 25 f. There is a community of interest in ensuring that the combined assets of
26 DEFENDANTS are sufficient to adequately compensate the members of the
27 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 28

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
6 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
7 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
8 PERIOD; 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 DEFENDANTS as to the members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 42. By the conduct alleged herein, DEFENDANTS have engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and
7 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
9 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

24 45. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
25 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANTS.
28

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

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

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

12 49. By and through the unlawful and unfair business practices described herein,
13 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
14 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
15 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
16 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
17 against competitors who comply with the law.

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

23 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
27 business practices, including earned but unpaid wages.

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

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

12 **SECOND CAUSE OF ACTION**

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

15 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
16 **DEFENDANTS)**

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

20 55. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
22 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
23 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

26 57. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a wage less than
28 the minimum so fixed is unlawful.

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

3 59. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was
6 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS.

8 60. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
10 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
12 pay.

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

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

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

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

1 65. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
3 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
7 minimum wages for their time worked.

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

16 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
18 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
19 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
20 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
21 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
22 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
23 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
24 SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
25 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
26 are entitled to seek and recover statutory costs.

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THIRD CAUSE OF ACTION

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

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

68. 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.

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

70. 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.

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

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

73. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and

1 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for
2 all overtime worked.

3 74. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
5 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
7 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
8 in any workweek.

9 75. In committing these violations of the California Labor Code, DEFENDANTS
10 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
11 consequently underpaid the actual time worked by PLAINTIFF and other members of the
12 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the
13 payment of all earned wages, and other benefits in violation of the California Labor Code, the
14 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

18 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
19 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
20 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
22 bargaining agreement that would preclude the causes of action contained herein this Complaint.
23 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR
24 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
25 provided by the State of California.

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

79. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in

1 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
2 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
4 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
5 business records and witnessed by employees.

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

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

11 84. 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 85. 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 86. 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 87. 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 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
11 **DEFENDANTS)**

12 88. 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 89. 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.

28 90. DEFENDANTS further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
SUB-CLASS Members who were not provided a rest period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
2 workday that rest period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

11 92. 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 93. Cal. Labor Code § 226 provides that an employer must furnish employees with an
15 "accurate itemized" statement in writing showing:

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

94. 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.

95. When DEFENDANTS did not accurately record PLAINTIFF’S and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS 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 overtime rate, 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, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANTS violated Cal. Lab. Code Sections 226(a)(9) by issuing itemized wage statements with the incorrect number of total hours worked. As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

20 98. Cal. Lab. Code § 200 provides that:

21 As used in this article:(a) "Wages" includes all amounts for labor performed by
22 employees of every description, whether the amount is fixed or ascertained by the
23 standard of time, task, piece, Commission basis, or other method of calculation. (b)
24 "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.

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

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

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her
4 intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting. Notwithstanding any other provision of law, an employee who
6 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.

7 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
8 CLASS Members' employment contract.

9 102. Cal. Lab. Code § 203 provides:

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

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

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
21 and severally, as follows:

22 1. On behalf of the CALIFORNIA CLASS:

- 23 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
24 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
25 b. An order temporarily, preliminarily and permanently enjoining and restraining
26 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
27 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
28 withheld from compensation due to PLAINTIFF and the other members of the

CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT’S’ ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

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

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

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3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, and/or §1197.

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs