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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL HARRINGTON, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

GENESIS PRIVATE SECURITY, INC. (fka
ATLAS PRIVATE SECURITY, INC.), a
California Corporation; ATLAS PRIVATE
SECURITY, INC., ATLAS PRIVATE
SECURITY, INC., a California Corporation;
and DOES 1-50, Inclusive,

Defendant.

Case No:

RG21105476

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;

ENDORSED
FILED
ALAMEDA COUNTY
JUL 16 2021

CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

VIA FAX

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

10 **DEMAND FOR A JURY TRIAL**

11 Plaintiff Michael Harrington an individual, (“PLAINTIFF”), on behalf of himself, and all
12 other similarly situated current and former employees, allege on information and belief, except
13 for their own acts and knowledge which are based on personal knowledge, the following:

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant GENESIS PRIVATE SECURITY, INC. (“DEFENDANT GENESIS”)
16 is a California Corporation and at all relevant times mentioned herein conducted and continues to
17 conduct substantial and regular business throughout California. Defendant ATLAS PRIVATE
18 SECURITY, INC. (“DEFENDANT ATLAS”) is a California Corporation and at all relevant
19 times mentioned herein conducted and continues to conduct substantial and regular business
20 throughout California. DEFENDANT GENESIS and DEFENDANT ATLAS are collectively
21 referred to herein as “DEFENDANT” or “DEFENDANTS.”

22 2. DEFENDANT GENESIS and DEFENDANT ATLAS were the joint employers of
23 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
24 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
25 herein and collectively referred to herein as “DEFENDANTS”.

26 3. DEFENDANT provides private security services throughout the State of
27 California, including the Fremont, California location where PLAINTIFF worked.

28 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
employee entitled to minimum wages, overtime pay and meal and rest periods from July 2020 to
September 2020.

5. PLAINTIFF brings this Class Action on behalf of himself and a California class,
defined as all individuals who are or previously were employed by DEFENDNAT ATLAS and/or

1 DEFENDANT GENESIS in California and classified as non-exempt employees (the
2 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
3 filing of the Complaint and ending on the date as determined by the Court (the “CALIFORNIA
4 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
5 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

26 8. The agents, servants and/or employees of the DEFENDANTS and each of them
27 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
28 authority as the agent, servant and/or employee of the DEFENDANTS, and personally

1 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
2 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the
3 other DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFF and
4 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of
5 the conduct of the DEFENDANT'S agents, servants and/or employees.

6 **THE CONDUCT**

7 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
8 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
9 worked, meaning the time during which an employee is subject to the control of an employer,
10 including all the time the employee is suffered or permitted to work. From time to time,
11 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
12 paying them for all the time they were under DEFENDANT'S control. Specifically,
13 DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to
14 be PLAINTIFF'S off-duty meal break. PLAINTIFF were often interrupted by work assignments.
15 Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result,
16 the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and
17 overtime compensation by regularly working without their time being accurately recorded and
18 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'
19 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
20 for all time worked is evidenced by DEFENDANT'S business records.

21 10. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
22 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
23 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
24 overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and
25 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and
26 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
27 applicable overtime compensation for overtime worked and to avoid paying these employees for
28 missed meal breaks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from

1 time to time, forfeited time worked by working without their time being accurately recorded and
2 without compensation at the applicable rates.

3 11. The mutability of the timekeeping system also allowed DEFENDANTS to alter
4 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
5 timekeeping system so as to create the appearance that PLAINTIFFS and other CALIFORNIA
6 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
7 were not at all times provided an off-duty meal break. This practice is a direct result of
8 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
9 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

10 12. DEFENDANTS consistently required PLAINTIFF and CALIFORNIA CLASS
11 Members to work off the clock without paying them for all the time they were under
12 DEFENDANTS' control performing pre-shift and post-shift duties. Before PLAINTIFF and
13 CALIFORNIA CLASS Members' "scheduled" start times, PLAINTIFF and CALIFORNIA
14 CLASS Members performed work for DEFENDANTS, but that work was rounded out and
15 PLAINTIFF and CALIFORNIA CLASS Members did not receive compensation for that time.

16 13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
17 CLASS Members were also from time to time unable to take off duty meal breaks and were not
18 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
19 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
20 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
21 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
22 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
23 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
24 these employees were required by DEFENDANTS to work ten (10) hours of work.
25 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
26 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
27 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
28

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
2 and practice.

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

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

1 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
2 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
3 the applicable minimum wage for all hours worked in a payroll period.

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

13 17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
14 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
15 DEFENDANT unlawfully rounded PLAINTIFF's and other CALIFORNIA CLASS Members'
16 time, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
17 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
18 other things, the correct time worked, including, and the gross wages paid for those periods during
19 the pay period, and the correct penalty payments or missed meal and rest periods in violation of
20 California Labor Code Sections 226 and 226.2.

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

1 19. Aside from the violations listed herein, DEFENDANTS failed to issue to
2 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
3 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
4 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
5 other members of the CALIFORNIA CLASS. As a result, from time to time DEFENDANTS
6 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements
7 which violated Cal. Lab. Code § 226.

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

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

1 related to the use of their personal cellular phones all on behalf of and for the benefit of
2 DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 2. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be dispositive
27 of the interests of the other members not parties to the adjudication
28

1 or substantially impair or impede their ability to protect their
2 interests;

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

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

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

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

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

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

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

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

- 27 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for

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

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

- 3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
4 the other members of the CALIFORNIA CLASS with all legally required off-duty,
5 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
6 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
8 statement in writing showing all accurate rates in effect during the pay period and
9 the corresponding amount of time worked at each rate by the employee;
10 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
11 CALIFORNIA CLASS members with necessary expenses incurred in the
12 discharge of their job duties;
13 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
14 employee is discharged or quits from employment, the employer must pay the
15 employee all wages due without abatement, by failing to tender full payment
16 and/or restitution of wages owed or in the manner required by California law to
17 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
18 their employment.

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

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

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
4 employee paid on an hourly basis who was subjected to the DEFENDANTS'
5 practice and policy which failed to calculate the time worked and pay the correct
6 total amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
7 PLAINTIFF sustained economic injury as a result of DEFENDANTS'
8 employment practices. PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS were and are similarly or identically harmed by the same
10 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by
11 DEFENDANTS; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
14 who are competent and experienced in Class Action litigation. There are no
15 material conflicts between the claims of the representative PLAINTIFF and the
16 members of the CALIFORNIA LABOR SUB-CLASS that would make class
17 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
18 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
19 Members.

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
25 the risk of:
- 26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA LABOR SUB-CLASS which would establish
28

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

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

27 1. Inconsistent or varying adjudications with respect to individual
28 members of the CALIFORNIA LABOR SUB-CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANTS; and/or,

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

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

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

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

21 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
22 CLASS predominate over any question affecting only individual CALIFORNIA
23 LABOR SUB-CLASS Members;

24 b. A Class Action is superior to any other available method for the fair and efficient
25 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
26 CLASS because in the context of employment litigation a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
28

1 their rights individually out of fear of retaliation or adverse impact on their
2 employment;

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

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

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

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

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

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

25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANTS as to the members of the
28 CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

21 48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
25 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

1 54. PLAINTIFF further demands on behalf of himself 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 55. 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 for all
4 overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
5 and DEFENDANTS' failure to properly compensate the members of the CALIFORNIA LABOR
6 SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a
7 workday and/or forty (40) hours in any workweek.

8 76. 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 77. 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 78. 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 79. 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 time worked. As set forth herein, DEFENDANTS' uniform policy and practice was to
21 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
22 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 80. 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 81. 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 82. 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 83. 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 himself and the CALIFORNIA LABOR
18 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
19 provided by the State of California.

20 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

100. 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 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.* Further, DEFENDANTS from time to time failed to issue an itemized wage statement to PLAINTIFF and other members of the CALIFORNIA CLASS that included the total hours worked and/or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by PLAINTIFF and other members of the CALIFORNIA CLASS. 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.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

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

9 **SEVENTH CAUSE OF ACTION**

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

11 **(Cal. Lab. Code §§ 2802)**

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

14 102. 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.

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

18
19 An employer shall indemnify his or her employee for all necessary expenditures
20 or losses incurred by the employee in direct consequence of the discharge of his
21 or her duties, or of his or her obedience to the directions of the employer, even
22 though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful.

24 104. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
25 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
27 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28 CLASS members for expenses which included, but were not limited to, costs related to using their

1 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
2 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
3 their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and
4 procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for expenses resulting from using their personal cellular phones for DEFENDANTS
6 within the course and scope of their employment for DEFENDANTS. These expenses were
7 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'
8 conduct to assert any waiver of this expectation. Although these expenses were necessary
9 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
10 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
11 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
12 laws and regulations of California.

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

26
27 As used in this article:(a) "Wages" includes all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the

1 standard of time, task, piece, Commission basis, or other method of calculation. (b)
2 "Labor" includes labor, work, or service whether rendered or performed under
3 contract, subcontract, partnership, station plan, or other agreement if the labor to be
4 paid for is performed personally by the person demanding payment.

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

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

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

19 110. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
20 CLASS Members' employment contract.

21 111. Cal. Lab. Code § 203 provides:

22
23 If an employer willfully fails to pay, without abatement or reduction, in accordance
24 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
25 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.

26 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
27 Members terminated and DEFENDANTS have not tendered payment of wages, to these
28 employees who missed meal and rest breaks, as required by law.

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

7 **NINTH CAUSE OF ACTION**

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

9 **(Cal. Lab. Code §§2698 et seq.)**

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

11 114. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
12 herein, the prior paragraphs of this Complaint.

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

22 116. PLAINTIFF, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, bring this Representative Action on behalf of the State of California with respect to
25 themselves and all individuals who are or previously were employed by DEFENDANT and
26 classified as non-exempt employees in California during the time period of May 10, 2020 until
27 the present (the "AGGRIEVED EMPLOYEES").
28

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

118. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 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, 1198, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

2 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
3 withheld from compensation due to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS; and

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

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

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

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

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

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

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

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

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

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

DATED: July 14, 2021

JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

DEMAND FOR A JURY TRIAL

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

DATED: July 14, 2021

JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

EXHIBIT 1



May 10, 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>	Atlas Private Security, Inc. Kaye Franklin Foster 1735 N. 1 st Street, Suite 104 San Jose, CA 95112 <i>Via Certified Mail with Return Receipt No. 7021 0350 0001 8165 1828</i>
Genesis Private Security, Inc. c/o Chris De Guzman 1735 N. 1 st Street, Suite 104 San Jose, CA 95112 <i>Via Certified Mail with Return Receipt No. 7021 0350 0001 8165 1866</i>	

Re: Notice of Violations of California Labor Code Sections §§ 201, 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, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our offices represent Plaintiff Michael Harrington (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Genesis Private Security, Inc. (fka Atlas Private Security, Inc), and Atlas Private Security, Inc. (Hereinafter referred to as “Defendants”). Plaintiff was employed by Defendants in California between July 2020 to September of 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with payment of all minimum wages and overtime wages owed, and with accurate wage statements.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him, and other aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 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, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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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Facsimile: (619) 599-8291

Attorneys for Plaintiffs

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

MICHAEL HARRINGTON, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

GENESIS PRIVATE SECURITY, INC (fka.
ATLAS PRIVATE SECURITY, INC), a
California Corporation; ATLAS PRIVATE
SECURITY, INC, ATLAS PRIVATE
SECURITY, INC., a California Corporation;
and DOES 1-50, Inclusive,

Defendant.

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant GENESIS PRIVATE SECURITY, INC. (“DEFENDANT GENESIS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business throughout California. Defendant ATLAS PRIVATE
7 SECURITY, INC. (“DEFENDANT ATLAS”) is a California Corporation and at all relevant
8 times mentioned herein conducted and continues to conduct substantial and regular business
9 throughout California. DEFENDANT GENESIS and DEFENDANT ATLAS are collectively
10 referred to herein as “DEFENDANT” or “DEFENDANTS.”

11 2. DEFENDANT GENESIS and DEFENDANT ATLAS were the joint employers of
12 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
13 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
14 herein and collectively referred to herein as “DEFENDANTS”.

15 3. DEFENDANT provides private security services throughout the State of
16 California, including the Fremont, California location where PLAINTIFF worked.

17 4. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
18 employee entitled to minimum wages, overtime pay and meal and rest periods from July 2020 to
19 September 2020.

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

27 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
28 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

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

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were 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, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. PLAINTIFF were often interrupted by work assignments. Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business records.

10. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these employees the applicable overtime compensation for overtime worked and to avoid paying these employees for missed meal breaks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable rates.

11. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFFS and other CALIFORNIA

1 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
2 were not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
4 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

5 12. DEFENDANTS consistently required PLAINTIFF and CALIFORNIA CLASS
6 Members to work off the clock without paying them for all the time they were under
7 DEFENDANTS' control performing pre-shift and post-shift duties. Before PLAINTIFF and
8 CALIFORNIA CLASS Members' "scheduled" start times, PLAINTIFF and CALIFORNIA
9 CLASS Members performed work for DEFENDANTS, but that work was rounded out and
10 PLAINTIFF and CALIFORNIA CLASS Members did not receive compensation for that time.

11 13. 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
21 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
22 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
23 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
24 and practice.

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

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

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

26 16. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
28 matter of company policy, practice and procedure, intentionally and knowingly failed to

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

7 17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
8 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
9 DEFENDANT unlawfully rounded PLAINTIFF's and other CALIFORNIA CLASS Members'
10 time, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
12 other things, the correct time worked, including, and the gross wages paid for those periods during
13 the pay period, and the correct penalty payments or missed meal and rest periods in violation of
14 California Labor Code Sections 226 and 226.2.

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

23 19. Aside from the violations listed herein, DEFENDANTS failed to issue to
24 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
25 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
26 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
27 other members of the CALIFORNIA CLASS. As a result, from time to time DEFENDANTS
28

1 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements
2 which violated Cal. Lab. Code § 226.

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

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

25 22. 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 the correct time worked by PLAINTIFF and other CALIFORNIA CLASS
2 Members. The proper calculation of these employees' time is the DEFENDANTS' burden. As
3 a result of DEFENDANTS' intentional disregard of the obligation to meet this burden,
4 DEFENDANTS failed to properly calculate and/or pay all required compensation for work
5 performed by the members of the CALIFORNIA CLASS and violated the California Labor Code
6 and regulations promulgated thereunder as herein alleged.

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

23 **JURISDICTION AND VENUE**

24 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
26 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
27 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.
28

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

6 **THE CALIFORNIA CLASS**

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

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

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

26 29. DEFENDANTS have the legal burden to establish that each and every
27 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks
28 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and

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

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

10 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
14 policies, practices and procedures that failed to pay all wages due the
15 CALIFORNIA CLASS for all time worked;
- 16 b. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
19 members;
- 20 c. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
22 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
23 members with necessary expenses incurred in the discharge of their job duties; and
- 24 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
26 company policies, practices and procedures that uniformly and systematically
27 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
28

1 CLASS for all time worked, including minimum wages owed and overtime wages
2 owed for work performed by these employees.

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

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

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

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

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

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFF seek declaratory relief holding that

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

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

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

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

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

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

27 iii. In the context of wage litigation, because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting their legal

1 rights out of fear of retaliation by DEFENDANTS, which may adversely
2 affect an individual's job with DEFENDANTS or with a subsequent
3 employer, the Class Action is the only means to assert their claims through
4 a representative; and

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

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

- 12 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
13 over any question affecting only individual CALIFORNIA CLASS Members
14 because the DEFENDANTS' employment practices are uniform and
15 systematically applied with respect to the CALIFORNIA CLASS.
- 16 b. A Class Action is superior to any other available method for the fair and efficient
17 adjudication of the claims of the members of the CALIFORNIA CLASS because
18 in the context of employment litigation a substantial number of individual
19 CALIFORNIA CLASS Members will avoid asserting their rights individually out
20 of fear of retaliation or adverse impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
22 to bring all members of the CALIFORNIA CLASS before the Court;
- 23 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
24 obtain effective and economic legal redress unless the action is maintained as a
25 Class Action;
- 26 e. There is a community of interest in obtaining appropriate legal and equitable relief
27 for the acts of unfair competition, statutory violations and other improprieties, and
28

1 in obtaining adequate compensation for the damages and injuries which
2 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANTS are sufficient to adequately compensate the members of the
5 CALIFORNIA CLASS for the injuries sustained;

6 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
7 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
8 with respect to the CALIFORNIA CLASS as a whole;

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

11 i. Class treatment provides manageable judicial treatment calculated to bring an
12 efficient and rapid conclusion to all litigation of all wage and hour related claims
13 arising out of the conduct of DEFENDANTS as to the members of the
14 CALIFORNIA CLASS.

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 36. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
22 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
24 CLASS") at any time during the period three (3) years prior to the filing of the original complaint
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
26 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
27 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
28 (\$5,000,000.00).

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

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

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

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

- 22 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
24 missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- 1 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
3 statements;
- 4 d. Whether DEFENDANTS unlawfully failed to pay the CALIFORNIA LABOR
5 SUB-CLASS for all time worked in violation of the California Labor Code and
6 California regulations and the applicable California Wage Order;
- 7 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
8 compensation for time worked, including overtime worked, under the overtime
9 pay requirements of California law;
- 10 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
11 conduct;
- 12 g. The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA LABOR SUB-CLASS; and
- 14 h. Whether DEFENDANTS' conduct was willful.
- 15 41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
16 under California law by:
- 17 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
18 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
19 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
20 § 1194;
- 21 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
22 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
23 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
24 Cal. Lab. Code §§ 1194 and 1197;
- 25 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
26 the other members of the CALIFORNIA CLASS with all legally required off-duty,
27 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
28

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate rates in effect during the pay period and
4 the corresponding amount of time worked at each rate by the employee;
- 5 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
6 CALIFORNIA CLASS members with necessary expenses incurred in the
7 discharge of their job duties;
- 8 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
9 employee is discharged or quits from employment, the employer must pay the
10 employee all wages due without abatement, by failing to tender full payment
11 and/or restitution of wages owed or in the manner required by California law to
12 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
13 their employment.

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

- 16 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
17 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
18 is impracticable and the disposition of their claims as a class will benefit the parties
19 and the Court;
- 20 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
21 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
22 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
23 CLASS;
- 24 c. The claims of the representative PLAINTIFF are typical of the claims of each
25 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
27 employee paid on an hourly basis who was subjected to the DEFENDANTS'
28 practice and policy which failed to calculate the time worked and pay the correct

1 total amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
2 PLAINTIFF sustained economic injury as a result of DEFENDANTS'
3 employment practices. PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS were and are similarly or identically harmed by the same
5 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by
6 DEFENDANTS; and

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

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

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

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

1 the adjudication or substantially impair or impede their ability to
2 protect their interests;

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

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

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

- 16 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
17 CLASS predominate over any question affecting only individual CALIFORNIA
18 LABOR SUB-CLASS Members;
- 19 b. A Class Action is superior to any other available method for the fair and efficient
20 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
21 CLASS because in the context of employment litigation a substantial number of
22 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
23 their rights individually out of fear of retaliation or adverse impact on their
24 employment;
- 25 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
26 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
27 before the Court;
- 28

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

21 48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
25 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 49. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

11 51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
12 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANTS.

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

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

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

26 55. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANTS so as to allow DEFENDANT to unfairly compete
3 against competitors who comply with the law.

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

9 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
10 and do, seek such relief as may be necessary to restore to them the money and property which
11 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
13 business practices, including earned but unpaid wages.

14 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
17 engaging in any unlawful and unfair business practices in the future.

18 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
20 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
21 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
23 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
24 unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

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

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

60. 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.

61. 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 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

62. 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.

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

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

65. 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 time they work. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

25 72. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continues
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
or the consequences to them, and with the despicable intent of depriving them of their property

1 and legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

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

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

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

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

11 79. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of time worked. As set forth herein, DEFENDANTS' uniform policy and practice was to
14 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
16 DEFENDANTS in fact failed to pay these employees the correct applicable overtime wages for
all overtime worked.

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

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

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

4 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
5 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
8 bargaining agreement that would preclude the causes of action contained herein this Complaint.
9 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR
10 SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights
11 provided by the State of California.

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

15 85. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
17 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
18 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
20 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
21 business records and witnessed by employees.

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

27 87. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
3 overtime rate.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

25 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

24 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code §§ 226 and 226.2)

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

98. 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.

1 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
2 “accurate itemized” statement in writing showing:

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

21 100. When DEFENDANTS did not accurately record PLAINTIFF’S and other
22 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also
23 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete
24 and accurate wage statements which failed to show, among other things, the correct number of
25 hours worked, missed meal and rest periods, owed to PLAINTIFF and other CALIFORNIA
26 CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
27 her employees with an accurate itemized wage statement in writing showing, among other things,
28 gross wages earned and all applicable hourly rates in effect during the pay period and the

1 corresponding amount of time worked at each hourly rate. Aside from the violations listed above
2 in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that
3 lists all the requirements under California Labor Code 226 *et seq.* Further, DEFENDANTS from
4 time to time failed to issue an itemized wage statement to PLAINTIFF and other members of the
5 CALIFORNIA CLASS that included the total hours worked and/or the applicable hourly rates in
6 effect during the pay period and the corresponding number of hours worked at each hourly rate
7 by PLAINTIFF and other members of the CALIFORNIA CLASS. As a result, from time to time
8 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
9 wage statements which violated Cal. Lab. Code § 226.

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

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SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

102. 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.

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

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

104. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA

LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)

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

106. 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.

107. Cal. Lab. Code § 200 provides that:

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

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

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

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

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.

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

5 111. Cal. Lab. Code § 203 provides:

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

11 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
12 Members terminated and DEFENDANTS have not tendered payment of wages, to these
13 employees who missed meal and rest breaks, as required by law.

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

20 **PRAYER FOR RELIEF**

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

23 1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANTS' violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 4 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
5 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
6 action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum wages, overtime wages, unreimbursed expenses, and other
9 compensation due to PLAINTIFF and the other members of the CALIFORNIA
10 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
11 CLASS PERIOD plus interest thereon at the statutory rate;
- 12 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
13 the applicable IWC Wage Order;
- 14 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
15 which a violation occurs and one hundred dollars (\$100) per member of the
16 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
18 an award of costs for violation of Cal. Lab. Code § 226; and,
- 19 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
20 CLASS as a penalty from the due date thereof at the same rate until paid or until an
21 action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
- 6 and/or §2802.

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8 DATED: _____, 2021

9

10 **ZAKAY LAW GROUP, APLC**

11 By: _____

12 Shani O. Zakay
13 Attorney for Plaintiffs

14 **DEMAND FOR A JURY TRIAL**

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

17 DATED: _____, 2021

18 **ZAKAY LAW GROUP, APLC**

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20 By: _____

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22 Shani O. Zakay
23 Attorney for Plaintiffs