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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

KATSIARYNA KARNACHOVA, an
individual, on behalf of herself, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

INTO NORTH AMERICA, INC. a Delaware
corporation; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. 37-2021-00023758-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

[additional causes of action continued on next page]

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- 6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203; and
 - 8. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, ET SEQ.

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant INTO NORTH AMERICA, INC. (“DEFENDANT”) is a Delaware corporation, sometimes doing business as INTO N.A. that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego. Defendant connects international students with universities, including universities in North America.

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

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,

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

6 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
7 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
8 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
9 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
10 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

11 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
12 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
14 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
15 for each underpaid employee.

16 6. PLAINTIFF has been employed by DEFENDANTS in San Diego as a non-exempt
17 employee, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
18 bonuses, overtime pay and legally compliant meal and rest periods from October 2015 to October 2020.

19 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
20 DEFENDANT's current and former non-exempt California employees (the "CALIFORNIA CLASS")
21 at any time during the period beginning 4 years prior to the filing of the Complaint and ending on a
22 date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
23 claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

24 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
27 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
28 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of

1 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
2 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
3 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
4 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
5 226.3.

6 9. DEFENDANT'S uniform policies and practices alleged herein were unlawful, unfair and
7 deceptive business practices whereby DEFENDANT retained and continues to retain wages due
8 PLAINTIFF and the other members of the CALIFORNIA CLASS.

9 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
11 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
12 and current unlawful conduct, and all other appropriate legal and equitable relief.

13 **JURISIDICITION AND VENUE**

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

18 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
19 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
20 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
22 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 13. In violation of the applicable sections of the California Labor Code and the requirements
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
26 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
27 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
28 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
2 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
3 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
4 worked at each hourly rate. DEFENDANT'S uniform policies and practices are intended to
5 purposefully avoid the accurate and full payment for all time worked as required by California law
6 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
7 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

9 **A. Meal Period Violations**

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

25 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
26 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
27 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
28 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS

1 members were required from time to time to perform work as ordered by DEFENDANTS for more
2 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
3 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
4 duty meal period for some workdays in which these employees were required by DEFENDANTS to
5 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
6 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
7 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to maintain adequate
10 staffing levels while increasing the production levels for each employee at the busy airports they
11 provided services for.

12 **B. Rest Period Violations**

13 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
14 CLASS members were also required from time to time to work in excess of four (4) hours without
15 being provided ten (10) minute rest periods as a result of their rigorous work schedule and
16 DEFENDANTS’ inadequate staffing . Further, for the same reasons these employees were denied their
17 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
18 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
20 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
21 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
22 a result of their rigorous work schedules and DEFENDANT’S inadequate staffing, PLAINTIFF and
23 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
24 DEFENDANT and DEFENDANT’S managers.

25 **C. Overtime Regular Rate Violation**

26 17. From time-to-time during the CLASS PERIOD, DEFENDANT failed and continues to
27 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
28 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members

1 forfeited wages due them for working overtime without compensation at the correct overtime rates.
2 DEFENDANT’S uniform policy and practice to not pay the CALIFORNIA CLASS members the
3 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
4 DEFENDANT’S business records.

5 18. State law provides that employees must be paid overtime at one-and-one-half times their
6 “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were compensated at
7 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee’s
8 performance.

9 19. The second component of PLAINTIFF’S and other CALIFORNIA CLASS members’
10 compensation was DEFENDANT’S flat-sum non-discretionary incentive program that paid
11 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
12 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid on an
13 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
14 set by DEFENDANTS. These flat-sum incentive payments are identified as “BONUS” in the wage
15 statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

16 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
17 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
18 sum non-discretionary bonus, DEFENDANT failed to accurately include the flat-sum non-
19 discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or calculated all
20 hours worked rather than just all non-overtime hours worked. Management and supervisors described
21 the incentive/bonus program to potential and new employees as part of the compensation package. As
22 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
23 members must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
24 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
25 by DEFENDANT.

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

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

7 **D. Wage Statement Violations**

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

16 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
17 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
18 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
19 discretionary incentive award, DEFENDANT also failed to provide PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
21 show, among other things, all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
23 missed meal and rest periods, or the total hours worked during the pay period.

24 24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
26 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
27 payroll error due to clerical or inadvertent mistake.

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CLASS ACTION ALLEGATIONS

25. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") during the period beginning 4 years prior to the filing of the complaint and ending on a date determined by the Court ("CLASS PERIOD").

26. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to separately compensate for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

27. The members of the class are so numerous that joinder of all class members is impractical.

28. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANTS failed to pay PLAINTIFF and the

CALIFORNIA CLASS members accurate overtime wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods; and,

29. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

30. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

31. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

32. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

33. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS members.

34. There is a strong community of interest among PLAINTIFF and the members of the

CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

35. The questions of law and fact common to the CALIFORNIA CLASS members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

37. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

1 39. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
2 17021.

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

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

14 Cal. Bus. & Prof. Code § 17203.

15 41. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
16 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
17 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
18 “UCL”), by engaging and continuing to engage in business practices which violates California law,
19 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
20 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
21 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief
22 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
23 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 43. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
2 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
3 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
4 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
5 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
6 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
7 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
8 restitution of wages wrongfully withheld.

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

12 45. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
13 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
14 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
15 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
16 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
17 Labor Code.

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

22 47. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
23 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
24 timely provided as required by law.

25 48. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
26 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
27 calculated overtime and missed meal and rest periods premiums.

28 49. By and through the unlawful and unfair business practices described herein,

1 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
2 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
3 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
4 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
5 compete against competitors who comply with the law.

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **For Failure to Pay Overtime Compensation**

3 **[Cal. Lab. Code §§ 510, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 54. 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 Complaint.

7 55. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between
8 April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful
9 and intentional violations of the California Labor Code and the Industrial Welfare Commission
10 requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including,
11 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
12 forty (40) hours in any workweek.

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

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

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

22 59. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
23 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
24 worked or were not accurately compensated for all overtime hours worked.

25 60. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
27 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
28 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other

1 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
2 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
3 in any workweek.

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

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

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

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

23 65. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
25 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
26 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
27 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
28 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

6 67. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
7 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
8 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
9 employees for their labor as a matter of uniform company policy, practice and procedure, and
10 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
11 members of the CALIFORNIA CLASS for overtime worked.

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

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

1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

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

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 70. 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 Complaint.

7 71. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
8 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
9 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
10 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
11 LABOR CLASS PERIOD.

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

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

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

19 75. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
20 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
21 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
22 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
23 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
24 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
25 of the CALIFORNIA CLASS.

26 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
28 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

85. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA

1 CLASS members with a second off-duty meal period in some workdays in which these employees were
2 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
3 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANTS' strict corporate policy and practice.

5 86. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
6 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
7 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
8 compensation at each employee's regular rate of compensation for each workday that a meal period was
9 not provided.

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

13 **FIFTH CAUSE OF ACTION**

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

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

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

9 **SIXTH CAUSE OF ACTION**

10 **For Failure to Provide Accurate Itemized Statements**

11 **[Cal. Lab. Code §§ 226 and 226.2]**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 17 1. Gross wages earned;
- 18 2. Total hours worked by the employee, except for any employee
19 whose compensation is solely based on a salary and who is exempt from
20 payment of overtime under subdivision (a) of Section 515 or any applicable
21 order of the Industrial Welfare Commission;
- 22 3. The number of piece-rate units earned and any applicable piece rate
23 if the employee is paid on a piece-rate basis;
- 24 4. All deductions, provided that all deductions made on written orders
25 of the employee may be aggregated and shown as one item;
- 26 5. Net wages earned;
- 27 6. The inclusive dates of the period for which the employee is paid,
- 28 7. 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,

8. The name and address of the legal entity that is the employer, and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

94. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

95. 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 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))

96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

2 97. Cal. Lab. Code § 200 provides that:

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

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

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

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

25 100. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
26 employment contract.

27 101. Cal. Lab. Code § 203 provides:
28

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

7 102. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
8 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
9 breaks, as required by law.

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

15 **EIGHTH CAUSE OF ACTION**

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

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

18 **(By PLAINTIFF and CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

1 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
2 PAGA claims cannot be subject to arbitration.

3 106. PLAINTIFF, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
5 this Representative Action on behalf of the State of California with respect to herself and all individuals
6 who are or previously were employed by DEFENDANTS in California during the time period of March
7 23, 2020 until the present (the "AGGRIEVED EMPLOYEES").

8 107. On March 23, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
9 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
10 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
11 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
12 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
13 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
14 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

15 108. The policies, acts and practices heretofore described were and are an unlawful business
16 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
17 minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other AGGRIEVED
18 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
19 statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections
20 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
21 226(a), 226.2, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violations of Applicable Industrial
22 Welfare Commission Wage Order(s), and pursuant to California Labor Code Section 2699.5, and
23 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery
24 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES.

27 109. Some or all of the conduct and violations alleged herein occurred during the PAGA
28 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF

1 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
2 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
3 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
4 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
5 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
6 Emphasis added, reh'g denied (June 13, 2018).)

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

13 B) An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

15 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
16 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

17 D) Restitutionary disgorgement of DEFENDANTS’s ill-gotten gains into a fluid fund for
18 restitution of the sums incidental to DEFENDANTS’s violations due to PLAINTIFF and to the other
19 members of the CALIFORNIA CLASS.

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

22 1. Compensatory damages, according to proof at trial, including compensatory
23 damages for overtime compensation due PLAINTIFF and the other members of the
24 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
25 interest thereon at the statutory rate;

26 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
2 of Cal. Lab. Code § 226;

3 3. Meal and rest period compensation pursuant to California Labor Code Section
4 226.7, 512 and the applicable IWC Wage Order;

5 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197; and,

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

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

10 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

11 3. On all claims:

12 A) An award of interest, including prejudgment interest at the legal rate;

13 B) Such other and further relief as the Court deems just and equitable; and,

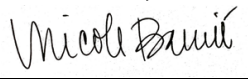
14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,

15 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

16
17 Dated: May 28, 2021

Respectfully Submitted,

BARVIÉ LAW, A.P.C.

18
19 By: 

Nicole Barvié

Attorneys for PLAINTIFF

21
22 **DEMAND FOR JURY TRIAL**

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

23
24 Dated: May 28, 2021

Respectfully Submitted,

BARVIÉ LAW, A.P.C.

25
26 By: 

Nicole Barvié

Attorneys for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #36601

March 23, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

INTO NORTH AMERICA, INC. c/o CSC - LAWYERS INCORPORATING SERVICE 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	
--	--

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff KATSIARYNA KARNACHOVA (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against INTO NORTH AMERICA, INC., a Delaware Corporation (“Defendant”). Plaintiff was employed by Defendant in California between October of 2015 to October 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendant failed to timely pay Plaintiffs and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contend that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiffs, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

JEAN-CLAUDE LAPUYADE (SBN 248676)

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

KATSIARYNA KARNACHOVA, an
individual, on behalf of herself, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

INTO NORTH AMERICA, INC. a Delaware
corporation; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203

DEMAND FOR JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant INTO NORTH AMERICA, INC. (“DEFENDANT”) is a Delaware
7 corporation, sometimes doing business as INTO N.A. that at all relevant times mentioned herein
8 conducted and continues to conduct substantial business in the state of California, county of San Diego.
9 Defendant connects international students with universities, including universities in North America.

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

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

26 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
28

1 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
3 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
5 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
6 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
7 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
8 for each underpaid employee.

9 6. PLAINTIFF has been employed by DEFENDANTS in San Diego as a non-exempt
10 employee, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
11 bonuses, overtime pay and legally compliant meal and rest periods from October 2015 to October 2020.

12 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
13 DEFENDANT's current and former non-exempt California employees (the "CALIFORNIA CLASS")
14 at any time during the period beginning 4 years prior to the filing of the Complaint and ending on a
15 date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
16 claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

17 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
18 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
19 losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy
20 and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS
21 with legally complaint meal and rest periods or an additional hour of pay at the regular
22 rate of compensation in *lieu* thereof in violation of California Labor Code Sections
23 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2)
24 failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
25 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1,
26 and (3) failed to provide accurate itemized wage statements in violation of California
27 Labor Code Sections 226 and 226.3.
28

9. DEFENDANT’S uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

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

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

THE CONDUCT

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT'S uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law

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

4 **A. Meal Period Violations**

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

20 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
21 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
22 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
23 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
24 members were required from time to time to perform work as ordered by DEFENDANTS for more
25 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
26 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
27 duty meal period for some workdays in which these employees were required by DEFENDANTS to
28 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF

and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

B. Rest Period Violations

16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedule and DEFENDANTS’ inadequate staffing . Further, for the same reasons 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 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANT’S inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT’S managers.

C. Overtime and Sick Time Regular Rate Violation

17. From time-to-time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them for working overtime without compensation at the correct overtime rates. DEFENDANT’S uniform policy and practice to not pay the CALIFORNIA CLASS members the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT’S business records.

18. State law provides that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were compensated at

1 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
2 performance.

3 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
4 compensation was DEFENDANT'S flat-sum non-discretionary incentive program that paid
5 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
6 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid on an
7 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
8 set by DEFENDANTS. These flat-sum incentive payments are identified as "BONUS" in the wage
9 statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

10 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
11 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
12 sum non-discretionary bonus, DEFENDANT failed to accurately include the flat-sum non-
13 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
14 hours worked rather than just all non-overtime hours worked. Management and supervisors described
15 the incentive/bonus program to potential and new employees as part of the compensation package. As
16 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
17 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
18 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
19 by DEFENDANT.

20 21. In violation of the applicable sections of the California Labor Code and the requirements
21 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
22 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
23 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
24 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the
25 correct overtime compensation as required by California law which allowed DEFENDANT to illegally
26 profit and gain an unfair advantage over competitors who complied with the law. To the extent
27 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT,
28 the CLASS PERIOD should be adjusted accordingly.

1 22. California Labor Code Section 246 mandates that paid sick time for non-employees shall
2 be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt
3 employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

4 23. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
5 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either
6 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly
7 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-
8 discretionary incentive pay from the regular rate of pay.

9 **D. Wage Statement Violations**

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

18 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
19 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
20 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
21 discretionary incentive award, DEFENDANT also failed to provide PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
23 show, among other things, all applicable hourly rates in effect during the pay period and the
24 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
25 missed meal and rest periods, or the total hours worked during the pay period.

26 26. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
28

DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

CLASS ACTION ALLEGATIONS

27. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") during the period beginning 4 years prior to the filing of the complaint and ending on a date determined by the Court ("CLASS PERIOD").

28. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to separately compensate for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

29. The members of the class are so numerous that joinder of all class members is impractical.

30. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed

meal and rest periods;

d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods; and,

31. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

32. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

33. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

34. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

35. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests

of the other CALIFORNIA CLASS members.

36. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

37. The questions of law and fact common to the CALIFORNIA CLASS members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

39. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 40. 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 Complaint.

7 41. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
8 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 43. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 “UCL”), by engaging and continuing to engage in business practices which violates California law,
25 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
26 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
27 1197, 1197.1, 1198, for which this Court should issue declaratory and other equitable relief pursuant to
28 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute

unfair competition, including restitution of wages wrongfully withheld.

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

45. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

47. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

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

49. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA

1 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
2 timely provided as required by law.

3 50. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
4 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
5 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

57. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between April 6, 2016 and the present ("LABOR CLASS PERIOD") bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

58. 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.

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

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

61. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

62. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

64. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

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

66. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

67. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum

hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

69. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all 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 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

71. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals

are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

73. PLAINTIFF and the other members of the CALIFORNIA 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 record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

74. 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.

75. 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 less wage than the minimum so fixed is unlawful.

76. 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.

77. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS.

2 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
3 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
4 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
5 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

14 81. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
16 to pay all earned wages.

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

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

28 84. In performing the acts and practices herein alleged in violation of California labor laws,

1 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
2 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
3 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
4 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
5 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
6 in order to increase company profits at the expense of these employees.

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

17 **FOURTH CAUSE OF ACTION**

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

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

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

23 87. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
24 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
25 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
26 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
27 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
28 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to

time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

88. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that a meal period was not provided.

89. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

91. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time to time 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

1 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
2 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
4 and DEFENDANTS' managers.

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

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

13 **SIXTH CAUSE OF ACTION**

14 **For Failure to Provide Accurate Itemized Statements**

15 **[Cal. Lab. Code §§ 226 and 226.2]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 21 1. Gross wages earned;
- 22 2. Total hours worked by the employee, except for any employee
23 whose compensation is solely based on a salary and who is exempt from
24 payment of overtime under subdivision (a) of Section 515 or any applicable
25 order of the Industrial Welfare Commission;
- 26 3. The number of piece-rate units earned and any applicable piece rate
27 if the employee is paid on a piece-rate basis;
- 28 4. All deductions, provided that all deductions made on written orders

of the employee may be aggregated and shown as one item;

5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid,

7. 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,

8. The name and address of the legal entity that is the employer, and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

96. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

97. 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 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal Lab. Code §§201, 202, 203)**

4 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

5 98. 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 Complaint.

7 99. Cal. Lab. Code § 200 provides that:

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

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

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

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

102. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

103. Cal. Lab. Code § 203 provides:

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

104. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for 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 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

1 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
2 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
4 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
5 members of the CALIFORNIA CLASS.

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

8 1. Compensatory damages, according to proof at trial, including compensatory
9 damages for overtime compensation due PLAINTIFF and the other members of the
10 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
11 interest thereon at the statutory rate;

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

17 3. Meal and rest period compensation pursuant to California Labor Code Section
18 226.7, 512 and the applicable IWC Wage Order;

19 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and,

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2. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: _____

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: _____

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

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