

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SITAJI, a California Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DORICELI RIVAS, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

FILED

Superior Court of California
County of Riverside

4/15/2021

J. Hendrickson

Electronically Filed

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Riverside Superior Court, Riverside Historic Courthouse
4050 Main Street
Riverside, CA 92501

CASE NUMBER:
(Número del Caso):

CVRI2101761

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha) **4/15/2021**

Clerk, by

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



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Attorneys for Plaintiff

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

DORICELI RIVAS, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SITAJI, a California Corporation; and DOES
1-50, Inclusive,

DEFENDANT.

Case No: **CVRI2101761**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

FILED
Superior Court of California
County of Riverside

4/15/2021
J. Hendrickson
Electronically Filed

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant SITAJI (“DEFENDANT”) is a California corporation and at all relevant
6 times mentioned herein conducted and continues to conduct substantial and regular business
7 throughout California.

8 2. DEFENDANT, owns and operates multiple hotels in California, including the
9 Riverside County, California location where PLAINTIFF worked.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from September of
12 2019 to May 22, 2020.

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

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

been economically injured by DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, due to DEFENDANT'S unlawful policy of requiring PLAINTIFF and CALIFORNIA CLASS Members to be available to work and "on-call" during meal breaks, PLAINTIFF and CALIFORNIA CLASS Members spent

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

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

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

1 DEFENDANT's policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
2 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
3 PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper
4 rest periods by DEFENDANT and DEFENDANT'S managers.

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

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

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

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

17 15. Aside from the violations listed herein, DEFENDANT failed to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
21 226.

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

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

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

15 18. By reason of this uniform conduct applicable to PLAINTIFF and all
16 CALIFORNIA CLASS Members, DEFENDANT committed 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 in a company-wide policy and procedure which failed to accurately
19 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
20 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
21 correct overtime rate. The proper recording of these employees' missed meal and rest breaks, and
22 proper payment of minimum wages and overtime, is the DEFENDANT'S burden. As a result of
23 DEFENDANT'S intentional disregard of the obligation to meet this burden, DEFENDANT failed
24 to properly pay all required compensation for work performed by the members of the
25 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
26 thereunder as herein alleged.

27 19. Specifically, as to PLAINTIFF'S pay, she was from time to time unable to take off
28 duty meal and rest breaks and was not fully relieved of duty for their rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which they were
4 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
5 PLAINTIFF with a rest break, they required PLAINTIFF to on-duty and on-call for the rest break.
6 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
7 accordance with DEFENDANT'S strict corporate policy and practice. Further, as a result of
8 DEFENDANT's unlawful policy to only pay overtime wages for pre-approved overtime hours,
9 PLAINTIFF was not fully compensated for all time spent working for and under DEFENDANT's
10 control. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that failed to
11 accurately display PLAINTIFF'S correct time worked and wages, as well as payments for missed
12 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
13 DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to her or any
14 penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for
15 PLAINTIFF individually do not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
2 individuals who are or previously were employed by DEFENDANT in California and classified
3 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning
4 four (4) years prior to the filing of the original complaint and ending on the date as determined by
5 the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
6 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

26 26. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.
28

1 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that failed to pay all wages due the
6 CALIFORNIA CLASS for all time worked;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
10 members;
- 11 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
12 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
13 company policies, practices and procedures that uniformly and systematically
14 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
15 CLASS for all time worked, including minimum wages owed and overtime wages
16 owed for work performed by these employees; and
- 17 d. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
19 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
20 members with necessary expenses incurred in the discharge of their job duties.

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

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

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
3 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
4 hourly basis who was subjected to the DEFENDANT’S deceptive practice and
5 policy which failed to provide the legally required meal and rest periods to the
6 CALIFORNIA CLASS and thereby systematically underpaid compensation to
7 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
8 as a result of DEFENDANT’S employment practices. PLAINTIFF and the
9 members of the CALIFORNIA CLASS were and are similarly or identically
10 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
11 misconduct engaged in by DEFENDANT; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA CLASS, and has retained counsel who are
14 competent and experienced in Class Action litigation. There are no material
15 conflicts between the claims of the representative PLAINTIFF and the members
16 of the CALIFORNIA CLASS that would make class certification inappropriate.
17 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
18 CALIFORNIA CLASS Members.

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

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

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

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

10 i. With respect to the First Cause of Action, the final relief on behalf of the
11 CALIFORNIA CLASS sought does not relate exclusively to restitution
12 because through this claim PLAINTIFF seeks declaratory relief holding
13 that the DEFENDANT’S policy and practices constitute unfair
14 competition, along with declaratory relief, injunctive relief, and incidental
15 equitable relief as may be necessary to prevent and remedy the conduct
16 declared to constitute unfair competition;

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

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

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

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

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

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

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

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

24 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
25 over any question affecting only individual CALIFORNIA CLASS Members
26 because the DEFENDANT'S employment practices are uniform and
27 systematically applied with respect to the CALIFORNIA CLASS.
28

- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

31. DEFENDANT maintain records from which the Court can ascertain and identify by job title each of DEFENDANT'S employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
6 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
7 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-
8 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
9 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
10 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
11 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
12 (\$5,000,000.00).

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

25 34. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT’S employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
28

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
2 additional job titles of similarly situated employees when they have been identified.

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

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

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
 - 11 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
13 thirty (30) minute meal breaks and rest periods;
 - 14 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
16 statements;
 - 17 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
 - 21 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 compensation for time worked, including overtime worked, under the overtime
23 pay requirements of California law;
 - 24 f. Whether DEFENDANNT unlawfully failed to timely pay earned wages to
25 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS;
 - 26 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct;
- 28

- h. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- i. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to

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

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

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

1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
2 Members.

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

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

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

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

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

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

- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The CALIFORNIA
3 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
4 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
5 PERIOD; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANT)**

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

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

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

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

30 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
31 engage in a business practice which violates California law, including but not limited to, the

1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
3 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
4 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
5 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

20 47. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
21 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 48. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
25 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
26 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

27 49. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal

1 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
2 each workday in which a second off-duty meal period was not timely provided for each ten (10)
3 hours of work.

4 50. PLAINTIFF further demands on behalf of herself and on behalf of each
5 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
6 not timely provided as required by law.

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

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

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

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

27 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of

1 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
2 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
4 and economic harm unless DEFENDANT are restrained from continuing to engage in these
5 unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

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

9 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
10 **DEFENDANT)**

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

14 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
16 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
17 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

1 62. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 64. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

28 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT'S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

23 76. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

77. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and the applicable overtime rates and

1 consequently underpaid the actual time worked by PLAINTIFF and other members of the
2 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
3 payment of all earned wages, and other benefits in violation of the California Labor Code, the
4 Industrial Welfare Commission requirements and other applicable laws and regulations.

5 78. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
7 full compensation for all overtime worked.

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

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

19 81. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
20 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
21 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
22 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
23 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
24 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
25 business records and witnessed by employees.

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

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

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

87. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice.

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

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

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code §§ 226 and 226.2)

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

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

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

- a. Gross wages earned;
- b. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an

employee identification number other than a social security number may be shown on the itemized statement;

h. The name and address of the legal entity that is the employer; and

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

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

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

b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

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

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the

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

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

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

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

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

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

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

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

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her

intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

107. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

108. 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.

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

110. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demands 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 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

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

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

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

20 115. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
22 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
23 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
24 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in
25 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
26 limited to Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197,
27 1197.1, 1198 & 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to
28 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil

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

4
5 **PRAYER FOR RELIEF**

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

8 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 the applicable IWC Wage Order;

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

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

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

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

14 4. On all claims:

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

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

17 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
19 §1197.

20
21 DATED: April 14, 2021

22
23 **ZAKAY LAW GROUP, APLC**

24
25
26 By: 

27 Shani O. Zakay
28 Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: April 14, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #35001

February 8, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

SITAJI

c/o Nimesh Rathod
31410 Castaic Road
Castaic, CA 91384

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, 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 Doriceli Rivas (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Sitaji (“Defendant”). Plaintiff was employed by Defendant in California from September of 2019 to May 22, 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore

incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

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

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Attorneys for Plaintiffs

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

DORICELI RIVAS, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SITAJI, a California Corporation; and DOES
1-50, Inclusive,

DEFENDANT.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant SITAJI (“DEFENDANT”) is a California corporation and at all relevant
6 times mentioned herein conducted and continues to conduct substantial and regular business
7 throughout California.

8 2. DEFENDANT, owns and operates multiple hotels in California, including the
9 Riverside County, California location where PLAINTIFF worked.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from September of
12 2019 to May 22, 2020.

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

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

been economically injured by DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, due to DEFENDANT'S unlawful policy of requiring PLAINTIFF and CALIFORNIA CLASS Members to be available to work and "on-call" during meal breaks, PLAINTIFF and CALIFORNIA CLASS Members spent

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

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

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

1 DEFENDANT's policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
2 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
3 PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper
4 rest periods by DEFENDANT and DEFENDANT'S managers.

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

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

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

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

17 15. Aside from the violations listed herein, DEFENDANT failed to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
21 226.

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

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

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

15 18. By reason of this uniform conduct applicable to PLAINTIFF and all
16 CALIFORNIA CLASS Members, DEFENDANT committed 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 in a company-wide policy and procedure which failed to accurately
19 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
20 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
21 correct overtime rate. The proper recording of these employees' missed meal and rest breaks, and
22 proper payment of minimum wages and overtime, is the DEFENDANT'S burden. As a result of
23 DEFENDANT'S intentional disregard of the obligation to meet this burden, DEFENDANT failed
24 to properly pay all required compensation for work performed by the members of the
25 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
26 thereunder as herein alleged.

27 19. Specifically, as to PLAINTIFF'S pay, she was from time to time unable to take off
28 duty meal and rest breaks and was not fully relieved of duty for their rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which they were
4 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
5 PLAINTIFF with a rest break, they required PLAINTIFF to on-duty and on-call for the rest break.
6 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
7 accordance with DEFENDANT'S strict corporate policy and practice. Further, as a result of
8 DEFENDANT's unlawful policy to only pay overtime wages for pre-approved overtime hours,
9 PLAINTIFF was not fully compensated for all time spent working for and under DEFENDANT's
10 control. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that failed to
11 accurately display PLAINTIFF'S correct time worked and wages, as well as payments for missed
12 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
13 DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to her or any
14 penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for
15 PLAINTIFF individually do not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
2 individuals who are or previously were employed by DEFENDANT in California and classified
3 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning
4 four (4) years prior to the filing of the original complaint and ending on the date as determined by
5 the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
6 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

26 26. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.
28

1 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that failed to pay all wages due the
6 CALIFORNIA CLASS for all time worked;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
10 members;
- 11 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
12 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
13 company policies, practices and procedures that uniformly and systematically
14 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
15 CLASS for all time worked, including minimum wages owed and overtime wages
16 owed for work performed by these employees; and
- 17 d. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
19 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
20 members with necessary expenses incurred in the discharge of their job duties.

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

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

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
3 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
4 hourly basis who was subjected to the DEFENDANT’S deceptive practice and
5 policy which failed to provide the legally required meal and rest periods to the
6 CALIFORNIA CLASS and thereby systematically underpaid compensation to
7 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
8 as a result of DEFENDANT’S employment practices. PLAINTIFF and the
9 members of the CALIFORNIA CLASS were and are similarly or identically
10 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
11 misconduct engaged in by DEFENDANT; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA CLASS, and has retained counsel who are
14 competent and experienced in Class Action litigation. There are no material
15 conflicts between the claims of the representative PLAINTIFF and the members
16 of the CALIFORNIA CLASS that would make class certification inappropriate.
17 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
18 CALIFORNIA CLASS Members.

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

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

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

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

10 i. With respect to the First Cause of Action, the final relief on behalf of the
11 CALIFORNIA CLASS sought does not relate exclusively to restitution
12 because through this claim PLAINTIFF seeks declaratory relief holding
13 that the DEFENDANT’S policy and practices constitute unfair
14 competition, along with declaratory relief, injunctive relief, and incidental
15 equitable relief as may be necessary to prevent and remedy the conduct
16 declared to constitute unfair competition;

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

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

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

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

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

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

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

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

24 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
25 over any question affecting only individual CALIFORNIA CLASS Members
26 because the DEFENDANT'S employment practices are uniform and
27 systematically applied with respect to the CALIFORNIA CLASS.
28

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

27 31. DEFENDANT maintain records from which the Court can ascertain and identify
28 by job title each of DEFENDANT'S employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANT’S company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
6 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
7 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-
8 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
9 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
10 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
11 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
12 (\$5,000,000.00).

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

25 34. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT’S employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
28

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
2 additional job titles of similarly situated employees when they have been identified.

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

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

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
 - 11 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
13 thirty (30) minute meal breaks and rest periods;
 - 14 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
16 statements;
 - 17 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
18 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
19 violation of the California Labor Code and California regulations and the
20 applicable California Wage Order;
 - 21 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 compensation for time worked, including overtime worked, under the overtime
23 pay requirements of California law;
 - 24 f. Whether DEFENDANNT unlawfully failed to timely pay earned wages to
25 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS;
 - 26 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct;
- 28

- h. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- i. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to

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

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

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

1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
2 Members.

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

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

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

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

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

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

- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The CALIFORNIA
3 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
4 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
5 PERIOD; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANT)**

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

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

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

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

44. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the

1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
3 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
4 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
5 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

20 47. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
21 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 48. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
25 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
26 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

27 49. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal

1 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
2 each workday in which a second off-duty meal period was not timely provided for each ten (10)
3 hours of work.

4 50. PLAINTIFF further demands on behalf of herself and on behalf of each
5 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
6 not timely provided as required by law.

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

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

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

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

27 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of

1 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
2 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
4 and economic harm unless DEFENDANT are restrained from continuing to engage in these
5 unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

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

9 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
10 **DEFENDANT)**

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

14 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
16 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
17 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

1 62. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 64. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

28 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT'S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

23 76. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

77. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and the applicable overtime rates and

1 consequently underpaid the actual time worked by PLAINTIFF and other members of the
2 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
3 payment of all earned wages, and other benefits in violation of the California Labor Code, the
4 Industrial Welfare Commission requirements and other applicable laws and regulations.

5 78. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
7 full compensation for all overtime worked.

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

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

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

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

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

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

87. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice.

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

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

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code §§ 226 and 226.2)

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

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

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

- a. Gross wages earned;
- b. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an

employee identification number other than a social security number may be shown on the itemized statement;

h. The name and address of the legal entity that is the employer; and

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

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

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

b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

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

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the

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

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

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

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

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

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

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

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

If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her

intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

107. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

108. 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.

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

110. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demands 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 CALIFORNIA LABOR SUB-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 a judgment against each DEFENDANT, 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 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS; and

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

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

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

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

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

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

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

25 3. On all claims:

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

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

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

including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs