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CASE NUMBER:
RG21086699

THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Case No: RG21086699

FIRST AMENDED 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;

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

JASON WALTERS and DANIEL ROSAS,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

WSD ENGINEERING, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendant.

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- 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;

1 8) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB. CODE
3 §§ 201, 202 AND 203;
4 9) FAILURE TO TIMELY PAY EARNED
5 WAGES IN VIOLATION OF CAL. LAB.
6 CODE § 204;
7 10) VIOLATION OF THE PRIVATE
8 ATTORNEYS GENERAL ACT [LABOR
9 CODE §§ 2698 *et seq.*]

10 **DEMAND FOR A JURY TRIAL**

11 Plaintiffs Jason Walters and Daniel Rosas, individuals, (“PLAINTIFFS”), on behalf of
12 themselves and all other similarly situated current and former employees, allege on information
13 and belief, except for their own acts and knowledge which are based on personal knowledge, the
14 following:

15 **PRELIMINARY ALLEGATIONS**

16 1. Defendant WSD ENGINEERING, INC. (“DEFENDANT”) is a California
17 corporation and at all relevant times mentioned herein conducted and continues to conduct
18 substantial and regular business throughout California.

19 2. DEFENDANT, owns and operates a wireless telecommunications, architecture,
20 engineering, construction and site development firm in California including the Alameda County,
21 California location where PLAINTIFFS worked.

22 3. PLAINTIFF Walters was employed by DEFENDANT in California as a non-
23 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from
24 October of 2018 to October 29, 2020.

25 4. PLAINTIFF Rosas was employed by DEFENDANT in California as a non-
26 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from
27 August of 2018 to November 8, 2020.

28 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
class, defined as all individuals who are or previously were employed by DEFENDANT in
California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
during the period beginning four (4) years prior to the filing of the Complaint and ending on the
date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in

1 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
2 dollars (\$5,000,000.00).

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

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

23 8. The agents, servants and/or employees of the DEFENDANT and each of them
24 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
25 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
26 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and
28 all DEFENDANT are jointly and severally liable to PLAINTIFFS 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

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS 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 PLAINTIFFS 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 only compensating for overtime wages that were pre-approved by DEFENDANT, PLAINTIFFS performed work before, during, and after their shifts, as well as during their meal breaks, spending time under DEFENDANT'S control for which they were not compensated. Moreover, PLAINTIFFS and other CALIFORNIA CLASS Members were not compensated for work they performed while "on-call" for DEFENDANT. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

10. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal breaks to complete tasks for DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period each workday in which these employees were required by DEFENDANT to work ten (10) hours

1 of work. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal
2 breaks without additional compensation and in accordance with DEFENDANT's strict corporate
3 policy and practice.

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

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

1 they had already clocked out. Moreover, PLAINTIFF and other CALIFORNIA CLASS Members
2 were from time to time required to drive to DEFENDANT's office after clocking out of their
3 scheduled shifts in order to drop off tools and discuss work related issues with DEFENDANT's
4 supervisors and/or managers. Further, PLAINTIFF and other CALIFORNIA CLASS Members
5 were required to complete work related tasks during their off-duty meal breaks. DEFENDANT
6 failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for any of the time
7 spent under DEFENDANT's control while working off-the-clock. As such, DEFENDANT failed
8 to pay PLAINTIFFS and other CALIFORNIA CLASS Members the applicable minimum wage
9 for all hours worked in a payroll period.

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

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

27 15. California Labor Code Section 226 requires an employer to furnish its employees
28 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,

(3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

16. Aside from the violations listed herein, DEFENDANT failed to issue to PLAINTIFFS 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 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

17. California Labor Code Section 204 requires an employer, who has in place a pay period schedule different than that provide in Cal. Lab. Code § 204(a), to pay wages within seven calendar days from the close of the payroll period. DEFENDANT as a matter of corporate policy, practice and procedure, failed to pay PLAINTIFFS and the other CALIFORNIA CLASS Members within seven calendar days from the close of DEFENDANT'S payroll period from time to time. DEFENDANT had in place a uniform policy and practice to issue wage statements to PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed DEFENDANT paid its employees within seven calendar days of the close of the payroll period. Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS were in fact, from time to time, not paid wages until after seven calendar days from the close of the payroll period.

18. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them
5 to be unlawful."

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

19 20. By reason of this uniform conduct applicable to PLAINTIFFS and all
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
22 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
23 calculate and record all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA
24 CLASS Members, and failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
25 the correct overtime rate. The proper recording of these employees' missed meal and rest breaks,
26 and proper payment of minimum wages and overtime, is the DEFENDANT'S burden. As a result
27 of DEFENDANT'S intentional disregard of the obligation to meet this burden, DEFENDANT
28 failed to properly pay all required compensation for work performed by the members of the

1 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
2 thereunder as herein alleged.

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

21 **JURISDICTION AND VENUE**

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

26 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
28 maintained offices and facilities in this County and/or conducts substantial business in this

County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

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

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

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

27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks missed as required by California laws. DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This common business practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as

1 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the
2 “UCL”) as causation, damages, and reliance are not elements of this claim.

3 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

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

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFFS and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA CLASS will create the risk of:
- 4 i. Inconsistent or varying adjudications with respect to individual members
5 of the CALIFORNIA CLASS which would establish incompatible
6 standards of conduct for the parties opposing the CALIFORNIA CLASS;
7 and/or;
- 8 ii. Adjudication with respect to individual members of the CALIFORNIA
9 CLASS which would as a practical matter be dispositive of interests of the
10 other members not party to the adjudication or substantially impair or
11 impede their ability to protect their interests.
- 12 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
13 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
14 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
15 DEFENDANT uniformly failed to pay all wages due for all time worked by the
16 members of the CALIFORNIA CLASS as required by law;
- 17 i. With respect to the First Cause of Action, the final relief on behalf of the
18 CALIFORNIA CLASS sought does not relate exclusively to restitution
19 because through this claim PLAINTIFFS seek declaratory relief holding
20 that the DEFENDANT’S policy and practices constitute unfair
21 competition, along with declaratory relief, injunctive relief, and incidental
22 equitable relief as may be necessary to prevent and remedy the conduct
23 declared to constitute unfair competition;
- 24 c. Common questions of law and fact exist as to the members of the CALIFORNIA
25 CLASS, with respect to the practices and violations of California law as listed
26 above, and predominate over any question affecting only individual
27 CALIFORNIA CLASS Members, and a Class Action is superior to other available
28

1 methods for the fair and efficient adjudication of the controversy, including
2 consideration of:

3 i. The interests of the members of the CALIFORNIA CLASS in individually
4 controlling the prosecution or defense of separate actions in that the
5 substantial expense of individual actions will be avoided to recover the
6 relatively small amount of economic losses sustained by the individual
7 CALIFORNIA CLASS Members when compared to the substantial
8 expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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

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

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

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

13 34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
14 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
15 the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
16 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the original
17 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-
18 CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
19 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
20 (\$5,000,000.00).

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

1 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the
2 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
3 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
4 CLASS PERIOD should be adjusted accordingly.

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

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

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

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

- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTNT unlawfully failed to timely pay earned wages to PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS;
- g. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- 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.

39. 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- 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 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and
- g. Violating Cal. Lab. Code § 204, which provides that an employer must pay an employee wages within seven days of the close of the payroll period.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT'S practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT'S employment practices. PLAINTIFFS and the

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

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

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

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

1 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
2 failed to pay all wages due for all time worked by the members of the
3 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

- 18 1. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS, which
20 would establish incompatible standards of conduct for the
21 DEFENDANT; and/or,
22 2. Adjudications with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS would as a practical matter
24 be dispositive of the interests of the other members not parties to
25 the adjudication or substantially impair or impede their ability to
26 protect their interests;

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

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

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

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

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

1 in obtaining adequate compensation for the damages and injuries which
2 DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-
3 CLASS;

- 4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 7 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
8 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 10 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANT. The CALIFORNIA
12 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
13 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
14 PERIOD; and
- 15 i. Class treatment provides manageable judicial treatment calculated to bring an
16 efficient and rapid conclusion to all litigation of all wage and hour related claims
17 arising out of the conduct of DEFENDANT as to the members of the
18 CALIFORNIA LABOR SUB-CLASS.

19 **FIRST CAUSE OF ACTION**

20 **UNLAWFUL BUSINESS PRACTICES**

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

22 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANT)**

23 43. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

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

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

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

12 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
16 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
17 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
18 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

25 48. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
26 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFFS, and
27 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
28 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,

1 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
2 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
3 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
4 wrongfully withheld.

5 49. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
6 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFFS and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 50. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
10 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
11 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

12 51. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
14 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
15 each workday in which a second off-duty meal period was not timely provided for each ten (10)
16 hours of work.

17 52. PLAINTIFFS further demand on behalf of themselves and on behalf of each
18 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
19 not timely provided as required by law.

20 53. By and through the unlawful and unfair business practices described herein,
21 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
23 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
24 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
25 against competitors who comply with the law.

26 54. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
28 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 55. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
4 to, and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages.

8 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANT are restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

27 59. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
28 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 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

10 63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
11 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
12 amount of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was
13 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other
14 members of the CALIFORNIA LABOR SUB-CLASS.

15 64. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
17 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
18 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
19 pay.

20 65. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the correct time worked and consequently underpaid the actual time
22 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
23 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
24 benefits in violation of the California Labor Code, the Industrial Welfare Commission
25 requirements and other applicable laws and regulations.

26 66. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
28 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

9 69. DEFENDANT knew or should have known that PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
11 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
15 minimum wages for their time worked.

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

15 73. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
16 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
17 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
18 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the
19 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
20 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
21 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

5 77. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
6 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
7 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
8 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFFS and
10 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed
11 to pay these employees the correct applicable overtime wages for all overtime worked.

12 78. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
14 of implementing a uniform policy and practice that denied accurate compensation to
15 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
16 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or
17 forty (40) hours in any workweek.

18 79. In committing these violations of the California Labor Code, DEFENDANT
19 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
20 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
21 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
22 payment of all earned wages, and other benefits in violation of the California Labor Code, the
23 Industrial Welfare Commission requirements and other applicable laws and regulations.

24 80. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
25 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
26 full compensation for all overtime worked.

27 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
28 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and
2 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid
3 collective bargaining agreement that would preclude the causes of action contained herein this
4 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the
5 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT'S violations of non-negotiable,
6 non-waivable rights provided by the State of California.

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

10 83. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
12 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
13 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
14 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
15 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
16 business records and witnessed by employees.

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

23 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
24 **DEFENDANT)**

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

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

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

2 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

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

6 **(Cal. Lab. Code §§ 2802)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
8 **DEFENDANT)**

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

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

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

19 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
23 CLASS members for expenses which included, but were not limited to, costs related to using their
24 personal cellular phones and personal vehicles, as well as purchase of their own tools, all on behalf
25 of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA
26 CLASS Members were required by DEFENDANT to use their personal cell phones to respond to
27 work related issues and use their personal vehicles to travel to and from work sites. Further,
28 PLAINTIFFS and CALIFORNIA CLASS Members were from time to time required by

1 DEFENDANT to purchase their own tools in order to complete work tasks for DEFENDANT.
2 DEFENDANT’S uniform policy, practice and procedure was to not reimburse PLAINTIFFS and
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
4 personal cellular phones, personal vehicles, and purchase of their own tools for DEFENDANT
5 within the course and scope of their employment for DEFENDANT. These expenses were
6 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT’S
7 conduct to assert any waiver of this expectation. Although these expenses were necessary
8 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
9 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR
10 SUB-CLASS members for these expenses as an employer is required to do under the laws and
11 regulations of California.

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

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

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

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

26 a. Gross wages earned;

27 b. Total hours worked by the employee, except for any employee whose
28 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.

102. 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.

103. When DEFENDANT did not accurately record PLAINTIFFS’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also failed to provide PLAINTIFFS 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

1 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that
2 every employer shall furnish each of his or her employees with an accurate itemized wage
3 statement in writing showing, among other things, gross wages earned and all applicable hourly
4 rates in effect during the pay period and the corresponding amount of time worked at each hourly
5 rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to
6 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
7 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFFS and the
8 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
9 Code § 226.

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

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

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **DEFENDANT)**

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

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

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

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

108. 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.

109. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

110. 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

1 discharged or who quits, the wages of the employee shall continue as a penalty
2 from the due date thereof at the same rate until paid or until an action therefor is
3 commenced; but the wages shall not continue for more than 30 days.

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

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

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY EARNED WAGES**

15 **(Cal. Lab. Code § 204)**

16 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
17 **DEFENDANT)**

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

21 114. Cal. Lab. Code § 204(a) provides in relevant part, that:

22 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
23 earned by any person in any employment are due and payable twice during each
24 calendar month, on days designated in advance by the employer as the regular
25 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
26 month shall be paid for between the 16th and the 26th day of the month during
27 which the labor was performed, and labor performed between the 16th and the last
28

1 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th
2 day of the following month.

3 115. DEFENDANT did not have in place a pay period schedule of the 1st and 15th, and
4 16th and the last day of the month. Rather, DEFENDANT had in place a pay period schedule
5 different than that provide in Cal. Lab. Code § 204(a).

6 116. As such, Cal. Lab. Code § 204(d) provides that:

7 The requirements of this section shall be deemed satisfied by the payment of wages
8 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
9 *seven calendar days* following the close of the payroll period.

10 117. PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
11 were from time to time paid more than seven days after the close of DEFENDANT's payroll
12 period. DEFENDANT had in place a uniform policy and practice to issue wage statements to
13 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed
14 DEFENDANT paid its employees within seven calendar days of the close of the payroll period.
15 Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
16 were in fact, from time to time, not paid wages until after seven calendar days from the close of
17 the payroll period.

18 118. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
19 § 204, causing injury and damages to the PLAINTIFFS and the other members of the
20 CALIFORNIA LABOR SUB-CLASS. Therefore, PLAINTIFFS and the other members of the
21 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages pursuant to Cal.
22 Lab. Code § 210 of one hundred dollars (\$100.00) for the initial violation for each failure to pay
23 each employee, and two hundred dollars (\$200.00) for each subsequent violation, plus 25 percent
24 (25%) of the amount unlawfully withheld, in an amount according to proof at the time of trial.

25 **TENTH CAUSE OF ACTION**

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

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

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

1 119. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
2 herein, the prior paragraphs of this Complaint.

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

12 121. PLAINTIFF, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, bring this Representative Action on behalf of the State of California with respect to
15 themselves and all individuals who are or previously were employed by DEFENDANT and
16 classified as non-exempt employees in California during the time period of January 15, 2020 until
17 the present (the "AGGRIEVED EMPLOYEES").

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

26 123. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because DEFENDANTS (a) failed to properly record and pay
28 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,

1 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
2 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
3 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
4 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510,
5 512, 558, 1194, 1197, 1197.1, 1198 & 2802, and the applicable Industrial Wage Order(s), and
6 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
7 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
8 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
9 and the other AGGRIEVED EMPLOYEES.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly
12 and severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

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

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
26 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
27 class action pursuant to Cal. Code of Civ. Proc. § 382;
28 b. Compensatory damages, according to proof at trial, including compensatory

1 damages for minimum wages, overtime wages, unreimbursed expenses, and other
2 compensation due to PLAINTIFFS and the other members of the CALIFORNIA
3 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
4 CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

15 f. The greater of all actual damages or one hundred dollars (\$100) for the initial pay
16 period in which a violation occurs and two hundred dollars (\$200) per member of
17 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
18 period, plus 25 percent (25%) of the amount unlawfully withheld, for violation of
19 Cal. Lab. Code § 210.

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

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

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1 4. On all claims:

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

7

8 DATED: April 5, 2021

9

10 **ZAKAY LAW GROUP, APLC**

11 By: _____

12 Shani O. Zakay
13 Attorney for Plaintiffs

14 **DEMAND FOR A JURY TRIAL**

15

16 PLAINTIFFS demand a jury trial on issues triable to a jury.

17 DATED: April 5, 2021

18

19 **ZAKAY LAW GROUP, APLC**

20 By: _____

21 Shani O. Zakay
22 Attorney for Plaintiffs

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #34701

January 15, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

WSD ENGINEERING, INC.

c/o The Simmons Firm, A Law Corporation
11440 W. Bernardo Court
Suite 212
San Diego, CA 92127-1643

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 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 Plaintiffs Jason Walters and Daniel Rosas (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against WSD Engineering, Inc., a California Corporation (“Defendant”). Plaintiff Walters was employed by Defendant in California between October of 2018 to October 29, 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Plaintiff Rosas was employed by Defendant in California between August of 2018 to November 8, 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to reimburse Plaintiffs and other aggrieved employees for business-related expenses. Further, Defendant failed to timely pay Plaintiffs and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 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 Plaintiffs against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized, flowing script.

Shani O. Zakay
Attorney for Plaintiffs

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
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San Diego, CA 92110
Telephone: (619)255-9047
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Jean-Claude Lapuyade (State Bar #248676)
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Facsimile: (619) 599-8291

Attorneys for Plaintiffs

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

JASON WALTERS and DANIEL ROSAS,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

WSD ENGINEERING, INC., a California
Corporation; and DOES 1-50, Inclusive,

DEFENDANT.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO 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) FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF CAL. LAB. CODE § 204.

DEMAND FOR A JURY TRIAL

1 Plaintiffs Jason Walters and Daniel Rosas, individuals, (“PLAINTIFFS”), on behalf of
2 themselves and all other similarly situated current and former employees, allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

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

9 2. DEFENDANT, owns and operates a wireless telecommunications, architecture,
10 engineering, construction and site development firm in California including the Alameda County,
11 California location where PLAINTIFFS worked.

12 3. PLAINTIFF Walters was employed by DEFENDANT in California as a non-
13 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from
14 October of 2018 to October 29, 2020.

15 4. PLAINTIFF Rosas was employed by DEFENDANT in California as a non-
16 exempt employee entitled to minimum wages, overtime pay and meal and rest periods from
17 August of 2018 to November 8, 2020.

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

25 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
26 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
27 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy
28 and practice which failed to lawfully compensate these employees for all their time worked.
DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and deceptive

1 business practice whereby DEFENDANT retained and continues to retain wages due to
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
4 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS who have been economically injured by DEFENDANT'S past and
6 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

24 **THE CONDUCT**

25 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT

1 required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all
2 the time they were under DEFENDANT’S control. Specifically, due to DEFENDANT’S
3 unlawful policy of only compensating for overtime wages that were pre-approved by
4 DEFENDANT, PLAINTIFFS performed work before, during, and after their shifts, as well as
5 during their meal breaks, spending time under DEFENDANT’S control for which they were not
6 compensated. Moreover, PLAINTIFFS and other CALIFORNIA CLASS Members were not
7 compensated for work they performed while “on-call” for DEFENDANT. As a result, the
8 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
9 compensation by regularly working without their time being accurately recorded and without
10 compensation at the applicable minimum wage and overtime rates. DEFENDANT’S uniform
11 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all
12 time worked is evidenced by DEFENDANT’s business records.

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

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

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

12 12. Under California law, every employer shall pay to each employee, on the
13 established payday for the period involved, not less than the applicable minimum wage for all
14 hours worked in the payroll period, whether the remuneration is measured by time, piece,
15 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
16 during which an employee is subject to the control of an employer and includes all the time the
17 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and
18 other CALIFORNIA CLASS Members were from time to time required to perform work for
19 DEFENDANT before and after their scheduled shifts, as well as during their off-duty meal breaks.
20 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
21 required to answer work related phone calls, text messages, and emails from DEFENDANT after
22 they had already clocked out. Moreover, PLAINTIFF and other CALIFORNIA CLASS Members
23 were from time to time required to drive to DEFENDANT's office after clocking out of their
24 scheduled shifts in order to drop off tools and discuss work related issues with DEFENDANT's
25 supervisors and/or managers. Further, PLAINTIFF and other CALIFORNIA CLASS Members
26 were required to complete work related tasks during their off-duty meal breaks. DEFENDANT
27 failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for any of the time
28 spent under DEFENDANT's control while working off-the-clock. As such, DEFENDANT failed

1 to pay PLAINTIFFS and other CALIFORNIA CLASS Members the applicable minimum wage
2 for all hours worked in a payroll period.

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

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

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

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

6 17. California Labor Code Section 204 requires an employer, who has in place a pay
7 period schedule different than that provide in Cal. Lab. Code § 204(a), to pay wages within seven
8 calendar days from the close of the payroll period. DEFENDANT as a matter of corporate policy,
9 practice and procedure, failed to pay PLAINTIFFS and the other CALIFORNIA CLASS
10 Members within seven calendar days from the close of DEFENDANT'S payroll period from time
11 to time. DEFENDANT had in place a uniform policy and practice to issue wage statements to
12 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed
13 DEFENDANT paid its employees within seven calendar days of the close of the payroll period.
14 Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
15 were in fact, from time to time, not paid wages until after seven calendar days from the close of
16 the payroll period.

17 18. DEFENDANT as a matter of corporate policy, practice and procedure,
18 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them
27 to be unlawful."
28

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

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

26 21. Specifically, as to PLAINTIFFS’ pay, they were from time to time unable to take
27 off duty meal and rest breaks and were not fully relieved of duty for their rest and meal periods.
28 PLAINTIFFS were required to perform work as ordered by DEFENDANT for more than five (5)

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

16 **JURISDICTION AND VENUE**

17 22. 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 PLAINTIFFS and similarly situated employees
20 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21 23. 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 24. PLAINTIFFS bring 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 25. 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 26. 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 PLAINTIFFS 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 27. 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 28. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.
28

1 29. 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 PLAINTIFFS and the CALIFORNIA
10 CLASS 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 PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS
20 members with necessary expenses incurred in the discharge of their job duties.

21 30. 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 PLAINTIFFS are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members
3 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on
4 an 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 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic
8 injury as a result of DEFENDANT’S employment practices. PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 31. 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 PLAINTIFFS seek 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 32. 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. PLAINTIFFS, 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.

33. 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. PLAINTIFFS 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 34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
6 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
7 the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
8 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the original
9 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-
10 CLASS 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 35. 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 and other wages and premiums owed to these employees, even though DEFENDANT enjoyed
19 the benefit of this work, required employees to perform this work and permitted or suffered to
20 permit this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR
21 SUB-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 36. 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. PLAINTIFFS will seek leave to amend the Complaint to include
2 any additional job titles of similarly situated employees when they have been identified.

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

5 38. 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 PLAINTIFFS 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 PLAINTIFFS 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 DEFENDANT unlawfully failed to timely pay earned wages to
25 PLAINTIFFS 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

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

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

- 6 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS
7 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
8 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code
9 § 1194;
10 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
11 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
12 the correct minimum wage pay for which DEFENDANT are liable pursuant to
13 Cal. Lab. Code §§ 1194 and 1197;
14 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
15 and the other members of the CALIFORNIA CLASS with all legally required off-
16 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest
17 breaks;
18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
20 statement in writing showing all accurate rates in effect during the pay period and
21 the corresponding amount of time worked at each overtime rate by the employee;
22 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
23 CALIFORNIA CLASS members with necessary expenses incurred in the
24 discharge of their job duties;
25 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
26 employee is discharged or quits from employment, the employer must pay the
27 employee all wages due without abatement, by failing to tender full payment
28 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; and

- 3 g. Violating Cal. Lab. Code § 204, which provides that an employer must pay an
4 employee wages within seven days of the close of the payroll period.

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

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

1 members of the CALIFORNIA LABOR SUB-CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
4 Members.

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

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

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

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

- 11 1. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS, which
13 would establish incompatible standards of conduct for the
14 DEFENDANT; and/or,
15 2. Adjudications with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS would as a practical matter
17 be dispositive of the interests of the other members not parties to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests;
20 iii. In the context of wage litigation because a substantial number of individual
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
22 legal rights out of fear of retaliation by DEFENDANT, which may
23 adversely affect an individual's job with DEFENDANT or with a
24 subsequent employer, the Class Action is the only means to assert their
25 claims through a representative; and,
26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will obviate
28 the need for unduly and unnecessary duplicative litigation that is likely to

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

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

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

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT. The CALIFORNIA
6 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
7 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
8 PERIOD; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANT)**

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

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

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

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

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

3 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
7 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
8 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
9 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

23 55. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
24 to, and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
27 business practices, including earned but unpaid wages.
28

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

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

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

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

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

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

25 68. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
26 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA
28 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 69. DEFENDANT knew or should have known that PLAINTIFFS and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
7 minimum wages for their time worked.

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

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

27 ///

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THIRD CAUSE OF ACTION

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

**(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANT)**

72. PLAINTIFFS, 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.

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

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

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

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

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

1 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed
2 to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

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

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

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

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

7
8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

7 **SIXTH CAUSE OF ACTION**

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

9 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

21 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
22 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
24 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
25 CLASS members for expenses which included, but were not limited to, costs related to using their
26 personal cellular phones and personal vehicles, as well as purchase of their own tools, all on behalf
27 of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA
28 CLASS Members were required by DEFENDANT to use their personal cell phones to respond to
work related issues and use their personal vehicles to travel to and from work sites. Further,
PLAINTIFFS and CALIFORNIA CLASS Members were from time to time required by

1 DEFENDANT to purchase their own tools in order to complete work tasks for DEFENDANT.
2 DEFENDANT’S uniform policy, practice and procedure was to not reimburse PLAINTIFFS and
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
4 personal cellular phones, personal vehicles, and purchase of their own tools for DEFENDANT
5 within the course and scope of their employment for DEFENDANT. These expenses were
6 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT’S
7 conduct to assert any waiver of this expectation. Although these expenses were necessary
8 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
9 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR
10 SUB-CLASS members for these expenses as an employer is required to do under the laws and
11 regulations of California.

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

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

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

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

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

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

- 26 a. Gross wages earned;
- 27 b. Total hours worked by the employee, except for any employee whose
28 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.

102. 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.

103. When DEFENDANT did not accurately record PLAINTIFFS’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also failed to provide PLAINTIFFS 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

1 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that
2 every employer shall furnish each of his or her employees with an accurate itemized wage
3 statement in writing showing, among other things, gross wages earned and all applicable hourly
4 rates in effect during the pay period and the corresponding amount of time worked at each hourly
5 rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to
6 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
7 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFFS and the
8 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
9 Code § 226.

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

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

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **DEFENDANT)**

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

1 106. Cal. Lab. Code § 200 provides that:

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

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

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

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

21 109. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-
22 CLASS Members' employment contract.

23 110. Cal. Lab. Code § 203 provides:

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

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

32 112. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
33 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS
34 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for
35 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS

1 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
2 costs as allowed by law.

3 **NINTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY EARNED WAGES**

5 **(Cal. Lab. Code § 204)**

6 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **DEFENDANT)**

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

11 114. Cal. Lab. Code § 204(a) provides in relevant part, that:

12 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
13 earned by any person in any employment are due and payable twice during each
14 calendar month, on days designated in advance by the employer as the regular
15 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
16 month shall be paid for between the 16th and the 26th day of the month during
17 which the labor was performed, and labor performed between the 16th and the last
18 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th
19 day of the following month.

20 115. DEFENDANT did not have in place a pay period schedule of the 1st and 15th, and
21 16th and the last day of the month. Rather, DEFENDANT had in place a pay period schedule
22 different than that provide in Cal. Lab. Code § 204(a).

23 116. As such, Cal. Lab. Code § 204(d) provides that:

24 The requirements of this section shall be deemed satisfied by the payment of wages
25 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
26 *seven calendar days* following the close of the payroll period.

27 117. PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
28 were from time to time paid more than seven days after the close of DEFENDANT's payroll
period. DEFENDANT had in place a uniform policy and practice to issue wage statements to
PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS that showed
DEFENDANT paid its employees within seven calendar days of the close of the payroll period.
Notwithstanding, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS

1 were in fact, from time to time, not paid wages until after seven calendar days from the close of
2 the payroll period.

3 118. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
4 § 204, causing injury and damages to the PLAINTIFFS and the other members of the
5 CALIFORNIA LABOR SUB-CLASS. Therefore, PLAINTIFFS and the other members of the
6 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages pursuant to Cal.
7 Lab. Code § 210 of one hundred dollars (\$100.00) for the initial violation for each failure to pay
8 each employee, and two hundred dollars (\$200.00) for each subsequent violation, plus 25 percent
9 (25%) of the amount unlawfully withheld, in an amount according to proof at the time of trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly
12 and severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

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

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
26 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
27 class action pursuant to Cal. Code of Civ. Proc. § 382;
28 b. Compensatory damages, according to proof at trial, including compensatory

1 damages for minimum wages, overtime wages, unreimbursed expenses, and other
2 compensation due to PLAINTIFFS and the other members of the CALIFORNIA
3 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
4 CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

15 f. The greater of all actual damages or one hundred dollars (\$100) for the initial pay
16 period in which a violation occurs and two hundred dollars (\$200) per member of
17 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
18 period, plus 25 percent (25%) of the amount unlawfully withheld, for violation of
19 Cal. Lab. Code § 210.

20 3. On all claims:

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

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

23 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
24 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
25 §1197.

26 ///

27 ///

28 ///

1 DATED: _____, 2021

2
3 **ZAKAY LAW GROUP, APLC**

4
5 By: _____

6
7 Shani O. Zakay
8 Attorney for Plaintiffs

9
10
11 **DEMAND FOR A JURY TRIAL**

12
13 PLAINTIFFS demand a jury trial on issues triable to a jury.

14 DATED: _____, 2021

15
16 **ZAKAY LAW GROUP, APLC**

17
18 By: _____

19 Shani O. Zakay
20 Attorney for Plaintiffs