

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BAHN THAI, INC. (dba Thai Basil Café / Veg Café & Bar), a California Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

COURTENAY ARNESON, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

FILED/ENDORSED

MAR 02 2021

By: K. Johnson
Deputy Clerk

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Sacramento Superior Court, Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER: 121-00295429
(Número del Caso)

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: **MAR 02 2021**
(Fecha)

Clerk, by K. JOHNSON, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

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



1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 3990 Old Town Avenue, Suite C204
4 San Diego, CA 92110
5 Telephone: (619)255-9047; Facsimile: (858) 404-9203

6 **THE JCL LAW FIRM, APLC**
7 Jean Claude Lapuyade (State Bar #248676)
8 3990 Old Town Avenue, Suite C204
9 San Diego, CA 92110
10 Telephone: (619)599-8292; Facsimile: (619) 599-8291

11 Attorneys for Plaintiff

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

14 COURTENAY ARNESON, an individual, on
15 behalf of herself and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 v.

19 BAHN THAI, INC. (dba Thai Basil Café / Veg
20 Café & Bar), a California Corporation; and
21 DOES 1-50, Inclusive,

22 Defendants.

FILED/ENDORSED

FEB 26 2021

By: K. Johnson
Deputy Clerk

Case No **34 - 2021 - 00295429**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. BAHN THAI, INC. (dba Thai Basil Café / Veg Café & Bar) (“DEFENDANT” or
7 “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business throughout California.

9 2. DEFENDANT operates a restaurant in Sacramento, California.

10 3. PLAINTIFF was employed by DEFENDANT in California from January 2020 to
11 February 2020 and was at all times relevant mentioned herein classified as a non-exempt
12 employee paid in whole or in part on an hourly basis and entitled to overtime pay and meal and
13 rest periods and payment of minimum and overtime wages.

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

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

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

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

7. The agents, servants and/or employees of Defendant and each of them acting on behalf of the Defendant acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the Defendant with respect to the conduct alleged herein.

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and 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. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

1 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
2 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
3 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
4 CLASS Members were required to perform work as ordered by DEFENDANT for more than five
5 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed to
6 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
7 for some workdays in which these employees were required by DEFENDANT to work ten (10)
8 hours of work. As a result, DEFENDANT's failure to provide PLAINTIFF and the
9 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
10 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS
11 therefore forfeited meal breaks without additional compensation and in accordance with
12 DEFENDANT's strict corporate policy and practice.

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

24 11. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
25 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
26 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
27 to show, among other things, the correct wages paid for missed meal and rest breaks. Cal. Lab.
28 Code § 226 provides that every employer shall furnish each of his or her employees with an

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

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

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

27 14. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
28 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor

1 Code and failed to pay her all minimum and overtime wages due to him. DEFENDANT did not
2 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
3 also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the
4 work performed by the PLAINTIFF did not prevent her from being relieved of all of her duties
5 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
6 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
7 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods
8 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
9 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
10 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
11 failed to pay any penalty wages owed to her under California Labor Code Section 203. The
12 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

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

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

24 **THE CALIFORNIA CLASS**

25 17. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
28 individuals who are or previously were employed by DEFENDANT in California and classified

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

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

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

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

25 21. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 22. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§
2 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in
3 place company policies, practices and procedures that uniformly and
4 systematically failed to record and pay PLAINTIFF and the other members of the
5 CALIFORNIA CLASS for all time worked, including minimum wages owed and
6 overtime wages owed for work performed by these employees; and,
- 7 b. Committing an act of unfair competition in violation of the UCL, by failing to
8 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
9 with the legally required meal and rest periods.
- 10 23. The Class Action meets the statutory prerequisites for the maintenance of a Class
11 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
- 12 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
13 joinder of all such persons is impracticable and the disposition of their claims as a
14 class will benefit the parties and the Court;
- 15 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
16 raised in this First Amended Complaint are common to the CALIFORNIA CLASS
17 will apply uniformly to every member of the CALIFORNIA CLASS;
- 18 c. The claims of the representative PLAINTIFF are typical of the claims of each
19 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
20 the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an
21 hourly basis who was subjected to the DEFENDANT's deceptive practice and
22 policy which failed to provide the legally required meal and rest periods to the
23 CALIFORNIA CLASS and thereby systematically underpaid compensation to
24 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
25 as a result of DEFENDANT's employment practices. PLAINTIFF and members
26 of the CALIFORNIA CLASS were and are similarly or identically harmed by the
27 same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in
28 by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

- 22 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
24 missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
28 statements;

- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- e. Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

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

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

27 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
28 in individually controlling the prosecution or defense of separate actions in

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- 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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; 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 LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

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

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

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

39. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 1198, for which this
2 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
3 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
4 competition, including restitution of wages wrongfully withheld.

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

10 41. By the conduct alleged herein, DEFENDANT's practices were deceptive and
11 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
12 mandated meal and rest periods, the required amount of compensation for missed meal and rest
13 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
14 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
15 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
16 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
17 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

22 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
23 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
24 provide all legally required meal breaks to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

26 44. Therefore, PLAINTIFF demands on behalf of themselves and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
2 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
3 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

10 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
11 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
12 DEFENDANT and were not paid for all the time they worked, including overtime work.

13 70. 70. DEFENDANT's uniform pattern of unlawful wage and hour practices
14 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
15 whole, as a result of implementing a uniform policy and practice that failed to accurately record
16 overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and
17 denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
18 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of
19 eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in
20 any workweek.

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

27 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
full compensation for all overtime worked.

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

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

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

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

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

1 78. 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 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
6 their legal rights, or the consequences to them, and with the despicable intent of depriving them
7 of their property and legal rights, and otherwise causing them injury in order to increase company
8 profits at the expense of these employees.

9 79. PLAINTIFF 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 minimum and/or overtime compensation is determined to be owed to the
14 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
15 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
16 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
17 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
18 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
20 recover statutory costs.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

 81. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

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

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

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

23
24 //

25
26 //

27
28 //

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

//

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

5
6
7

8
9

- 10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 90. When DEFENDANT did not accurately record PLAINTIFF's and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal. Lab.
3 Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that
4 properly and accurately itemizes all minimum and overtime wages and missed meal and rest
5 period payments owed to PLAINTIFF and the other members of the CALIFORNIA LABOR
6 SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.
7 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
8 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
9 Code 226 *et seq.*

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

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

1 93. 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 94. 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 95. 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 96. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-
22 CLASS Members' employment contract.

23 97. 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 98. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
30 Members terminated and DEFENDANT has not tendered payment of wages, to these employees
31 who missed meal and rest breaks, as required by law.

32 99. 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, PLAINTIFF
34 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
35 for 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
4 **EIGHTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 2698 et seq.]**

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

8 100. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
9 herein, the prior paragraphs of this Complaint.

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

19 102. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, bring this Representative Action on behalf of the State of California with respect to herself
22 and all individuals who are or previously were employed by DEFENDANT as sales persons in
23 California during the time period of October 22, 2019 until the present (the "AGGRIEVED
24 EMPLOYEES").

25 103. On October 22, 2020 PLAINTIFF gave written notice by certified mail to the
26 Labor and Workforce Development Agency (the "Agency") and the employer of the
27 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
28 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 104. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
6 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
7 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
8 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
9 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
10 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
11 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
12 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
13 Code Private Attorney General Act of 2004 as the representative of the State of California for the
14 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 105. Some or all of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
21 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
22 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

23 //

24 //

25 //

26 //

27 //

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §§ 2802)

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and unreimbursed expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the

- 1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
2 the statutory rate;
- 3 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
4 the applicable IWC Wage Order;
- 5 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
6 which a violation occurs and one hundred dollars (\$100) per member of the
7 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
8 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
9 an award of costs for violation of Cal. Lab. Code § 226;
- 10 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
11 CLASS as a penalty from the due date thereof at the same rate until paid or until an
12 action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
- 13 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197.
- 15 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 16 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
17 General Act of 2004; and
- 18 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 19 4. On all claims:
- 20 a. An award of interest, including prejudgment interest at the legal rate;
- 21 b. Such other and further relief as the Court deems just and equitable; and
- 22 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
24 §1197.

25 DATED: February 26, 2021

26 **ZAKAY LAW GROUP, APLC**

27 By:

28 
Shani O. Zakay
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: February 26, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #31701

October 22, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

BAHN THAI, INC.
(dba Thai Basil Café / Veg Café & Bar)
c/o SIGMUND F LINDLEY
2431 J ST UNIT A
SACRAMENTO CA 95816

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 Plaintiff COURTENAY ARNESON ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against **BAHN THAI, INC. (dba Thai Basil Café / Veg Café & Bar)** ("Defendant"). Plaintiff was employed by Defendant in California between January 2020 to February 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as minimum wages. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to pay Plaintiff's and other aggrieved employees' minimum wages and overtime and meal and rest break premiums. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, 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 Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for
COURTENAY ARNESON

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619)255-9047; Facsimile: (858) 404-9203

THE JCL LAW FIRM, APLC

Jean Claude Lapuyade (State Bar #248676)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619)599-8292; Facsimile: (619) 599-8291

Attorneys for Plaintiff

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

COURTENAY ARNESON, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

BAHN THAI, INC. (dba Thai Basil Café / Veg
Café & Bar), a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. BAHN THAI, INC. (dba Thai Basil Café / Veg Café & Bar) (“DEFENDANT” or
7 “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business throughout California.

9 2. DEFENDANT operates a restaurant in Sacramento, California.

10 3. PLAINTIFF was employed by DEFENDANT in California from January 2020 to
11 February 2020 and was at all times relevant mentioned herein classified as a non-exempt
12 employee paid in whole or in part on an hourly basis and entitled to overtime pay and meal and
13 rest periods and payment of minimum and overtime wages.

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

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

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

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

7. The agents, servants and/or employees of Defendant and each of them acting on behalf of the Defendant acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the Defendant with respect to the conduct alleged herein.

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and 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. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

1 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
2 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
3 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
4 CLASS Members were required to perform work as ordered by DEFENDANT for more than five
5 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed to
6 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
7 for some workdays in which these employees were required by DEFENDANT to work ten (10)
8 hours of work. As a result, DEFENDANT's failure to provide PLAINTIFF and the
9 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
10 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS
11 therefore forfeited meal breaks without additional compensation and in accordance with
12 DEFENDANT's strict corporate policy and practice.

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

24 11. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
25 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
26 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
27 to show, among other things, the correct wages paid for missed meal and rest breaks. Cal. Lab.
28 Code § 226 provides that every employer shall furnish each of his or her employees with an

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

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

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

27 14. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
28 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor

1 Code and failed to pay her all minimum and overtime wages due to him. DEFENDANT did not
2 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
3 also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the
4 work performed by the PLAINTIFF did not prevent her from being relieved of all of her duties
5 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
6 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
7 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods
8 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
9 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
10 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
11 failed to pay any penalty wages owed to her under California Labor Code Section 203. The
12 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

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

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

24 **THE CALIFORNIA CLASS**

25 17. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
28 individuals who are or previously were employed by DEFENDANT in California and classified

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

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

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

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

25 21. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 22. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§
2 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in
3 place company policies, practices and procedures that uniformly and
4 systematically failed to record and pay PLAINTIFF and the other members of the
5 CALIFORNIA CLASS for all time worked, including minimum wages owed and
6 overtime wages owed for work performed by these employees; and,
- 7 b. Committing an act of unfair competition in violation of the UCL, by failing to
8 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
9 with the legally required meal and rest periods.
- 10 23. The Class Action meets the statutory prerequisites for the maintenance of a Class
11 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
- 12 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
13 joinder of all such persons is impracticable and the disposition of their claims as a
14 class will benefit the parties and the Court;
- 15 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
16 raised in this First Amended Complaint are common to the CALIFORNIA CLASS
17 will apply uniformly to every member of the CALIFORNIA CLASS;
- 18 c. The claims of the representative PLAINTIFF are typical of the claims of each
19 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
20 the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an
21 hourly basis who was subjected to the DEFENDANT's deceptive practice and
22 policy which failed to provide the legally required meal and rest periods to the
23 CALIFORNIA CLASS and thereby systematically underpaid compensation to
24 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
25 as a result of DEFENDANT's employment practices. PLAINTIFF and members
26 of the CALIFORNIA CLASS were and are similarly or identically harmed by the
27 same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in
28 by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

- 22 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
24 missed meal and rest breaks in violation of the California Labor Code and
25 California regulations and the applicable California Wage Order;
26 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
28 statements;

- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- e. Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

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

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

27 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
28 in individually controlling the prosecution or defense of separate actions in

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- 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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; 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 LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

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

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

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

39. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 1198, for which this
2 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
3 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
4 competition, including restitution of wages wrongfully withheld.

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

10 41. By the conduct alleged herein, DEFENDANT's practices were deceptive and
11 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
12 mandated meal and rest periods, the required amount of compensation for missed meal and rest
13 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
14 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
15 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
16 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
17 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

22 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
23 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
24 provide all legally required meal breaks to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

26 44. Therefore, PLAINTIFF demands on behalf of themselves and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

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

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
2 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
3 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

10 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
11 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
12 DEFENDANT and were not paid for all the time they worked, including overtime work.

13 70. 70. DEFENDANT's uniform pattern of unlawful wage and hour practices
14 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
15 whole, as a result of implementing a uniform policy and practice that failed to accurately record
16 overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and
17 denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
18 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of
19 eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in
20 any workweek.

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

27 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
full compensation for all overtime worked.

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

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

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

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

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

1 78. 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 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
6 their legal rights, or the consequences to them, and with the despicable intent of depriving them
7 of their property and legal rights, and otherwise causing them injury in order to increase company
8 profits at the expense of these employees.

9 79. PLAINTIFF 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 minimum and/or overtime compensation is determined to be owed to the
14 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
15 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
16 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
17 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
18 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
20 recover statutory costs.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

 81. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

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

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

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

23
24 //

25
26 //

27
28 //

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

//

//

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
3 **(Cal. Lab. Code § 226)**

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

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

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

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

1 90. When DEFENDANT did not accurately record PLAINTIFF's and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal. Lab.
3 Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that
4 properly and accurately itemizes all minimum and overtime wages and missed meal and rest
5 period payments owed to PLAINTIFF and the other members of the CALIFORNIA LABOR
6 SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.
7 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
8 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
9 Code 226 *et seq.*

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

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

1 93. 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 94. 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 95. 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 96. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-
22 CLASS Members' employment contract.

23 97. 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.

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

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

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

3
4 **EIGHTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 2698 et seq.]**

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

8 100. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
9 herein, the prior paragraphs of this Complaint.

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

19 102. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, bring this Representative Action on behalf of the State of California with respect to herself
22 and all individuals who are or previously were employed by DEFENDANT as sales persons in
23 California during the time period of _____ until the present (the "AGGRIEVED
24 EMPLOYEES").

25 103. On _____, PLAINTIFF gave written notice by certified mail to the Labor
26 and Workforce Development Agency (the "Agency") and the employer of the specific
27 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
28 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 104. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
6 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
7 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
8 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
9 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
10 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
11 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
12 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
13 Code Private Attorney General Act of 2004 as the representative of the State of California for the
14 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 105. Some or all of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
21 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
22 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

23 //

24 //

25 //

26 //

27 //

1 **NINTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and unreimbursed expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the

1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
2 the statutory rate;

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

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

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

13 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197.

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

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

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

19 4. On all claims:

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

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

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

25 DATED: October 21, 2020

26 **ZAKAY LAW GROUP, APLC**

27 By: _____
28 Shani O. Zakay
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: October 21, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1