



ZAKAY LAW GROUP

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November 10, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

HOEHN MOTORS, INC.
c/o FRANK CONRAD SALCEDO
5556 PASEO DEL NORTE
CARLSBAD CA 92008

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents Traci Pollinger (“Plaintiff”) and other aggrieved employees in an action against Hoehn Motors, Inc. (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from 2004 to April 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

Plaintiff is seeking to represent *all* aggrieved employees who worked for Defendants in California during the relevant claim period, including both non-exempt employees and employees subject to various exemptions.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is

therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Respectfully,

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

Shani O. Zakay
Attorney at Law

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

TRACI POLLINGER on behalf of herself
and on behalf of all persons similarly
situated,

Plaintiff,

v.

HOEHN MOTORS, INC., 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; and
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant HOEHN MOTORS, INC. (“DEFENDANT” or “DEFENDANTS”) is
6 a California Corporation and at all relevant times mentioned herein conducted and continues to
7 conduct substantial and regular business throughout California.

8 2. DEFENDANT, owns and operates car dealerships throughout California.

9 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
10 employee entitled to minimum wages, overtime pay and meal and rest periods from 2004 to
11 April of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
12 DEFENDANT as a non-exempt employee paid on an hourly basis.

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

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

1 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and
2 current unlawful conduct, and all other appropriate legal and equitable relief.

3 6. To the extent this action includes a cause of action for violations of the Private
4 Attorneys’ General Act (“PAGA”), PLAINTIFF brings this representative PAGA action on
5 behalf of herself, the State of California, and a group of Aggrieved Employees, defined as all
6 individuals who were employed by DEFENDANT in California and classified as either non-
7 exempt employees and/or as exempt employees at any time during the period beginning one (1)
8 years prior to the service of notice on DEFENDANT and the LWDA and ending on the date as
9 determined by the Court.

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

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

27 //

28 //

THE CONDUCT

1
2 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
3 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANT'S control. Specifically,
8 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
9 PLAINTIFF'S off-duty meal break. PLAINTIFF was often interrupted by work assignments
10 during her breaks. Indeed there were many days where PLAINTIFF did not even receive a
11 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from
12 time to time, forfeited minimum wage and overtime compensation by working without their
13 time being accurately recorded and without compensation at the applicable minimum wage and
14 overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other
15 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business
16 records.

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

27 11. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
28 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours

1 without being provided ten (10) minute rest periods. Further, these employees were denied their
2 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
3 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
4 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
5 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
6 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
7 remain on the premises and subject to DEFENDANT's control. If they were to leave
8 DEFENDANT's premises, PLAINTIFF and the CALIFORNIA CLASS Members were required
9 to clock out. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
10 with one hour wages in lieu thereof. As a result of their rigorous work schedules, and in
11 compliance with DEFENDANT's policy, PLAINTIFF and other CALIFORNIA CLASS
12 Members were periodically denied their proper rest periods by DEFENDANT and
13 DEFENDANT'S managers.

14 12. From time to time, when PLAINTIFF and other CALIFORNIA CLASS worked
15 during what was supposed to be their meal breaks, DEFENDANT also failed to provide
16 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
17 wage statements which failed to show, among other things, the correct time and overtime
18 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
19 hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal.
20 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
21 an accurate itemized wage statement in writing showing, among other things, gross wages
22 earned and all applicable hourly rates in effect during the pay period and the corresponding
23 amount of time worked at each hourly rate. Aside from the violations listed above in this
24 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
25 all the requirements under California Labor Code 226 *et seq.*, including the accurate number of
26 total hours worked. As a result, from time to time DEFENDANT provided PLAINTIFF and the
27 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
28 Code § 226.

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

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

22 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
23 CLASS Members as a business expense, were required by DEFENDANT to use their own
24 personal cellular phones as a result of and in furtherance of their job duties as employees for
25 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
26 associated with the use of their personal cellular phones for DEFENDANT’S benefit.
27 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
28 DEFENDANT to use their personal cell phones to conduct work related business. As a result, in

1 the course of their employment with DEFENDANT the PLAINTIFF and other members of the
2 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
3 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
4 benefit of DEFENDANT.

5 16. Specifically as to PLAINTIFF, she was from time to time unable to take off duty
6 meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
7 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
8 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
9 provide PLAINTIFF with a second off-duty meal period each workday in which she was
10 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
11 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
12 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
13 failed to accurately display payments for missed meal and rest periods for certain pay periods in
14 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all
15 wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
16 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
17 \$75,000.

18 **JURISDICTION AND VENUE**

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

23 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against members
27 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.
28

THE CALIFORNIA CLASS

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

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

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

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

1 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
2 claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS

Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

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

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA CLASS.

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

8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

7 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 11 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
12 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
13 missed meal and rest breaks in violation of the California Labor Code and
14 California regulations and the applicable California Wage Order;
- 15 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
17 thirty (30) minute meal breaks and rest periods;
- 18 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
19 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
20 statements;
- 21 d. Whether DEFENDANT have engaged in unfair competition by the above-listed
22 conduct;
- 23 e. The proper measure of damages and penalties owed to the members of the
24 CALIFORNIA LABOR SUB-CLASS; and
- 25 f. Whether DEFENDANT’s conduct was willful.

26 34. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
27 under California law by:
28

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code §§ 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.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members

1 is impracticable and the disposition of their claims as a class will benefit the
2 parties and the Court;

3 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
4 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
5 CLASS and will apply uniformly to every member of the CALIFORNIA
6 LABOR SUB-CLASS;

7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
10 employee paid on an hourly basis who was subjected to the DEFENDANT'S
11 practice and policy which failed to pay the correct amount of wages due to the
12 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
13 a result of DEFENDANT's employment practices. PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
15 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
16 misconduct engaged in by DEFENDANT; and

17 d. The representative PLAINTIFF will fairly and adequately represent and protect
18 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
19 counsel who are competent and experienced in Class Action litigation. There are
20 no material conflicts between the claims of the representative PLAINTIFF and
21 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
22 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
23 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
24 Members.

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

27 a. Without class certification and determination of declaratory, injunctive, statutory
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

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

Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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

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

40. 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).

41. 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 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,

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

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

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

18 44. 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 45. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
23 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

6 48. 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, and has deprived them
9 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
10 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
11 compete against competitors who comply with the law.

12 49. 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
14 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
15 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
16 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 50. 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 have 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
21 unfair business practices, including earned but unpaid wages.

22 51. 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 52. 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
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As

1 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to
4 engage in these 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 53. 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
12 of this Complaint.

13 54. 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
15 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
16 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
17 Members.

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

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

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

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

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

6 60. 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 61. 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
14 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

15 62. 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 63. 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-
20 CLASS for the true time they worked, PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
22 injury in amounts which are presently unknown to them and which will be ascertained
23 according to proof at trial.

24 64. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
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,
28 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
correct minimum wages for their time worked.

1 65. 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 continue
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
6 rights, or the consequences to them, and with the despicable intent of depriving them of their
7 property and legal rights, and otherwise causing them injury in order to increase company
8 profits at the expense of these employees.

9 66. 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
17 LABOR SUB-CLASS Members. DEFENDANT'S conduct as alleged herein was willful,
18 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
19 CLASS Members 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 67. 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
27 of this Complaint.

28 68. 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

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

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

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

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

15 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
17 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

25 74. In committing these violations of the California Labor Code, DEFENDANT acted
26 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
27 the California Labor Code, the Industrial Welfare Commission requirements and other
28 applicable laws and regulations.

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

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

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

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

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

28 80. DEFENDANT knew or should have known that PLAINTIFF and the other
members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 applicable overtime rate.

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

83. 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.

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

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

86. 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.

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)

87. 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.

88. 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.

89. 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.

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

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

9 92. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “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
17 employee 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
24 an employee identification number other than a social security number may be
25 shown 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 93. When DEFENDANT did not accurately record PLAINTIFF's and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT
3 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 complete and accurate wage statements which failed to show, among other things, missed meal
5 and rest periods and all minimum and overtime wages owed to PLAINTIFF and other
6 CALIFORNIA CLASS Members. DEFENDANT also failed to provide PLAINTIFF and the
7 other members of the CALIFORNIA CLASS with complete and accurate wage statements
8 which failed to show, among other things, the total number of hours worked in each pay period.
9 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
10 with an accurate itemized wage statement in writing showing, among other things, gross wages
11 earned and all applicable hourly rates in effect during the pay period and the corresponding
12 amount of time worked at each hourly rate. Aside from the violations listed above in this
13 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
14 all the requirements under California Labor Code 226 *et seq.* As a result, from time to time
15 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
16 wage statements which violated Cal. Lab. Code § 226.

17 94. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
18 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
20 expended calculating the correct rates for the overtime worked and the amount of employment
21 taxes which were not properly paid to state and federal tax authorities. These damages are
22 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
23 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
24 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
25 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
26 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
27 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).
28

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

9 96. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

100. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a

penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

101. 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.

102. 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 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

103. 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.

104. 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.

105. 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-

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

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

18 **NINTH CAUSE OF ACTION**

19 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**

20 **[Cal. Labor Code §§ 2698-2699.5]**

21 **(Alleged by PLAINTIFF and the AGGRIEVED EMPLOYEES and against all**
22 **Defendants)**

23
24 107. PLAINTIFF and the aggrieved employees, defined as all current and former non-
25 exempt employees of DEFENDANTS who suffered one or more Labor Code violations
26 enumerated in Labor Code § 2698 *et seq.* (“AGGRIEVED EMPLOYEES”) between
27 _____ and the Present (“PAGA PERIOD”) reallege and incorporate by this reference, as
28 though fully set forth herein, the prior paragraphs of this Complaint.

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

11 109. PLAINTIFF brings this Representative Action on behalf of the State of California
12 with respect to HERSELF and all other current and former AGGRIEVED EMPLOYEES
13 employed by DEFENDANT during the PAGA PERIOD.

14 110. At all relevant times, for the reasons described herein, and others, PLAINTIFF
15 and other employees were aggrieved employees of DEFENDANT within the meaning of Labor
16 Code Section 2699(c).

17 111. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
18 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
19 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
20 2699.3

21 112. PLAINTIFF complied with the procedures for bringing suit specified in Labor
22 Code Section 2699.3. By certified letter, return receipt requested, dated _____, PLAINTIFF
23 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
24 DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
25 including the facts and theories to support the alleged violations. A true and correct copy of this
26 letter is attached hereto as **Exhibit A**.

27 113. As of _____, more than sixty-five (65) days after serving the LWDA with
28 notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of

1 its intent to investigate the DEFENDANT's alleged violations as mandated by Labor Code
2 Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
3 PLAINTIFF may commence and is authorized to pursue this cause of action.

4 114. 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 PLAINTIFFS and
7 other AGGRIEVED EMPLOYEES legally required meal and rest breaks, and/or separately
8 compensate for rest breaks, (c) failed to provide accurate itemized wage statements, and (d)
9 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
10 Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6,
11 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,
12 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to
13 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
14 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
16 the other AGGRIEVED EMPLOYEES.

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

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining 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, and Seventh 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 unreimbursed expenses, minimum wages, overtime wages, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226; and

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

6 3. On behalf of the State of California: For civil penalties to the extent permitted by law
7 pursuant to the Labor Code under the Private Attorneys General Act;

8 4. On all claims:

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

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

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

14
15 DATED: _____, 2020
16

17 **ZAKAY LAW GROUP, APLC**
18

19
20 By: _____

21 Shani O. Zakay
22 Attorney for Plaintiffs
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DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff