

SUMMONS (CITACION JUDICIAL)

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

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

URBAN ALCHEMY, a California Corporation; and DOES 1-50,
Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NICOLAS NEUTALL, an individual, on behalf of himself and on behalf
of all persons similarly situated,

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):

San Francisco Superior Court, Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CCC-20-588622

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):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE 04 2021
(Fecha)

CLERK OF THE COURT
(Secretario)

Clark by [Signature]
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

- ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

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

4 **JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade (State Bar #248676)
6 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292; Facsimile: (619) 599-8291

7 Attorneys for Plaintiff

FILED
San Francisco County Superior Court

DEC 23 2020

CLERK OF THE COURT
BY: Skylene Holman
Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 NICOLAS NEUTALL, an individual, on
12 behalf of himself and on behalf of all persons
similarly situated,

13 Plaintiff,

14 v.

15 URBAN ALCHEMY, a California
16 Corporation; and DOES 1-50, Inclusive,

17 Defendants.

Case No. **CGC-20-588622**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiff Nicolas Neutall ("PLAINTIFF"), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 for his own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

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

8 2. DEFENDANT operates various non-profit programs assisting urban
9 communities in California.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from May 2020
12 to July 2020. PLAINTIFF was at all times relevant mentioned herein classified by
13 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
14 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
18 period beginning four years from the filing of this complaint and ending on the date as
19 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked, including
26 overtime. DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and
27 deceptive business practice whereby DEFENDANT retained and continues to retain wages due
28 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other

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

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

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

22 THE CONDUCT

23 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
24 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
25 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
26 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
27 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
28 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS

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

5 9. State law provides that employees must be paid overtime at one-and-one-
6 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
7 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

9 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
10 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
11 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
12 performance for DEFENDANT. The non-discretionary incentive program provided all
13 employees paid on an hourly basis with incentive compensation when the employees met the
14 various performance goals set by DEFENDANT. However, when calculating the regular rate of
15 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
16 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
17 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package. As
19 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
20 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
21 in a systematic underpayment of overtime compensation to PLAINTIFF and other
22 CALIFORNIA CLASS Members by DEFENDANT.

23 11. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally and knowingly failed to
26 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct
27 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is
28 intended to purposefully avoid the payment of the correct overtime compensation as required by

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

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

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

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

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

23 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
24 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
25 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
26 CLASS with complete and accurate wage statements which failed to show, among other things,
27 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
28 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments

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

9 17. By reason of this uniform conduct applicable to PLAINTIFF and all
10 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
11 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
12 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
13 accurately calculate and record the correct overtime rate for the overtime worked by
14 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
15 employees’ overtime hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
16 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
17 calculate and/or pay all required overtime compensation for work performed by the members of
18 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
19 thereunder as herein alleged.

20 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
21 him in the form of two components. One component of PLAINTIFF’S compensation was a base
22 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
23 incentive wages earned for working certain shifts. DEFENDANT paid the incentive wages, so
24 long as PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
25 DEFENDANT’s predefined eligibility performance requirements in various pay periods
26 throughout his employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
27 incentive wages. During these pay periods in which PLAINTIFF was paid the non-discretionary
28 incentive wages by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but

1 DEFENDANT never included the incentive compensation in PLAINTIFF'S regular rate of pay
2 for the purposes of calculating what should have been PLAINTIFF'S accurate overtime rate and
3 thereby underpaid PLAINTIFF for overtime worked throughout her employment with
4 DEFENDANT. The incentive compensation paid by DEFENDANT constituted wages within
5 the meaning of the California Labor Code and thereby should have been part of PLAINTIFF'S
6 "regular rate of pay." PLAINTIFF was also from time to time unable to take off duty meal and
7 rest breaks and was not fully relieved of duty for his meal periods, resulting in off-the-clock
8 work and unpaid minimum wages. PLAINTIFF was required to perform work as ordered by
9 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
10 break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
11 each workday in which he was required by DEFENDANT to work ten (10) hours of work.
12 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
13 accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT also
14 provided PLAINTIFF with a paystub that failed to accurately display PLAINTIFF'S correct
15 rates of overtime pay and payments for missed meal and rest periods for certain pay periods in
16 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the
17 overtime compensation still owed to them or any penalty wages owed to them under Cal. Lab.
18 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
19 or value of \$75,000.

20 JURISDICTION AND VENUE

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

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

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

3 **THE CALIFORNIA CLASS**

4 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
5 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
6 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
7 individuals who are or previously were employed by DEFENDANT in California and classified
8 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
9 beginning four years from the filing of this complaint and ending on the date as determined by
10 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
11 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
12 (\$5,000,000.00).

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

16 23. The California Legislature has commanded that "all wages... ..earned by any
17 person in any employment are due and payable twice during each calendar month, on days
18 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
19 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
20 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
21 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
22 however, is statutorily authorized to "establish exemptions from the requirement that an
23 overtime rate of compensation be paid... ..for executive, administrative, and professional
24 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
25 test of the exemption, [and] customarily and regularly exercises discretion and independent
26 judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
27 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
28 qualify for exemption from the above requirements.

1 24. 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 systematically failed to correctly
5 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
6 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
7 work, required employees to perform this work and permitted or suffered to permit this
8 overtime work.

9 25. DEFENDANT has the legal burden to establish that each and every
10 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
11 accurately calculate the “regular rate of pay” by including the incentive compensation that
12 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
13 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
14 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
15 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
16 overtime rate for all overtime worked, so as to satisfy their burden. This common business
17 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
18 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
19 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
20 claim.

21 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
22 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
23 employee for all overtime worked at the applicable rate, as required by California Labor Code
24 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
25 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
26 as to include all earnings in the overtime compensation calculation as required by California
27 Labor Code §§ 510, *et seq.*
28

1 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
6 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
7 company policies, practices and procedures that failed to pay all wages due the
8 CALIFORNIA CLASS for all time worked, including overtime, and failed to
9 accurately record the applicable rates of all overtime worked by the
10 CALIFORNIA CLASS;
- 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 unlawfully,
13 unfairly, and/or deceptively having in place a company policy, practice and
14 procedure that failed to correctly calculate overtime compensation due to
15 PLAINTIFF and the members of the CALIFORNIA CLASS;
- 16 c. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
18 provide mandatory meal and/or rest breaks to PLAINTIFF and the
19 CALIFORNIA CLASS members;
- 20 d. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
22 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
23 CLASS members with necessary expenses incurred in the discharge of their job
24 duties.

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

- 1 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
2 joinder of all such persons is impracticable and the disposition of their claims as
3 a class will benefit the parties and the Court;
- 4 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
5 raised in this Complaint are common to the CALIFORNIA CLASS will apply
6 uniformly to every member of the CALIFORNIA CLASS;
- 7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
9 of the CALIFORNIA CLASS, was subjected to the uniform employment
10 practices of DEFENDANT and was a non-exempt employee paid on an hourly
11 basis and paid additional non-discretionary incentive wages who was subjected
12 to the DEFENDANT's practice and policy which failed to pay the correct rate of
13 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
14 CALIFORNIA CLASS and thereby systematically under pays overtime
15 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
16 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
17 members of the CALIFORNIA CLASS were and are similarly or identically
18 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
19 misconduct engaged in by DEFENDANT; and
- 20 d. The representative PLAINTIFF will fairly and adequately represent and protect
21 the interest of the CALIFORNIA CLASS, and has retained counsel who are
22 competent and experienced in Class Action litigation. There are no material
23 conflicts between the claims of the representative PLAINTIFF and the members
24 of the CALIFORNIA CLASS that would make class certification inappropriate.
25 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
26 CALIFORNIA CLASS Members.
- 27 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
28 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

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

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

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

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

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

31. 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;

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

10 32. DEFENDANT maintains records from which the Court can ascertain and
11 identify by job title each of DEFENDANT's employees who as have been systematically,
12 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
13 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
14 any additional job titles of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
28 compensation for the overtime worked by PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
2 work, required employees to perform this work and permitted or suffered to permit this
3 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
4 CLASS Members overtime wages at the correct amount to which these employees are entitled
5 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
7 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

8 35. DEFENDANT maintains records from which the Court can ascertain and
9 identify by name and job title, each of DEFENDANT's employees who have been
10 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
11 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
12 to include any additional job titles of similarly situated employees when they have been
13 identified.

14 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 18 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
19 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
20 violation of the California Labor Code and California regulations and the
21 applicable California Wage Order;
- 22 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
23 to compensation for time worked, including overtime worked, under the overtime
24 pay requirements of California law;
- 25 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
26 for all overtime worked PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS;

- 1 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
3 thirty (30) minute meal breaks and rest periods;
- 4 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
6 statements;
- 7 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
8 conduct;
- 9 g. The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and
- 11 h. Whether DEFENDANT's conduct was willful.

12 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
13 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
14 Members and failed to provide accurate records of the applicable overtime rates for the
15 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
16 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
17 basis by DEFENDANT according to uniform and systematic company procedures as alleged
18 herein above. This business practice was uniformly applied to each and every member of the
19 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
20 adjudicated on a class-wide basis.

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

- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
25 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
26 Code § 1194 & § 1198;
- 27
28

- 1 b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for
3 all the time they work;
- 4 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
5 and the other members of the CALIFORNIA CLASS with all legally required
6 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
7 rest breaks;
- 8 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
10 statement in writing showing all accurate and applicable overtime rates in effect
11 during the pay period and the corresponding amount of time worked at each
12 overtime rate by the employee;
- 13 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS members with necessary expenses incurred in the
15 discharge of their job duties; and
- 16 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
17 employee is discharged or quits from employment, the employer must pay the
18 employee all wages due without abatement, by failing to tender full payment
19 and/or restitution of wages owed or in the manner required by California law to
20 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
21 their employment.

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

- 24 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
26 is impracticable and the disposition of their claims as a class will benefit the
27 parties and the Court;
- 28

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

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

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

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 DEFENDANT
15 uniformly failed to pay all wages due, including the correct overtime rate, for all
16 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
17 required by law;
- 18 c. Common questions of law and fact predominate as to the members of the
19 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
20 violations of California Law as listed above, and predominate over any question
21 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
22 Class Action is superior to other available methods for the fair and efficient
23 adjudication of the controversy, including consideration of:
 - 24 i. The interests of the members of the CALIFORNIA LABOR SUB-
25 CLASS in individually controlling the prosecution or defense of separate
26 actions in that the substantial expense of individual actions will be
27 avoided to recover the relatively small amount of economic losses
28 sustained by the individual CALIFORNIA LABOR SUB-CLASS

- 1 Members when compared to the substantial expense and burden of
2 individual prosecution of this litigation;
- 3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:
- 5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS, which
7 would establish incompatible standards of conduct for the
8 DEFENDANT; and/or,
- 9 2. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a practical matter
11 be dispositive of the interests of the other members not parties to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests;
- 14 iii. In the context of wage litigation because a substantial number of
15 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
16 asserting their legal rights out of fear of retaliation by DEFENDANT,
17 which may adversely affect an individual's job with DEFENDANT or
18 with a subsequent employer, the Class Action is the only means to assert
19 their claims through a representative; and,
- 20 iv. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will
22 obviate the need for unduly and unnecessary duplicative litigation that is
23 likely to result in the absence of certification of this action pursuant to
24 Cal. Code of Civ. Proc. § 382.
- 25 42. This Court should permit this action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382 because:
27
28

- 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)

43. 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.

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

45. 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).

46. 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, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,

1 2802, 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 47. 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 48. 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 for overtime worked, failed to
13 accurately to record the applicable rate of all overtime worked, and failed to provide the
14 required amount of overtime compensation due to a systematic miscalculation of the overtime
15 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
16 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
17 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
18 including restitution of wages wrongfully withheld.

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

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

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

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 52. PLAINTIFF further demands on behalf of herself 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 53. 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 overtime worked,
9 and 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 54. 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 55. 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
21 unfair business practices, including earned but unpaid wages for all overtime worked.

22 56. 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 57. 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 is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

10 58. 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 59. 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 the applicable rates for all overtime worked by PLAINTIFF and other
17 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
18 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
19 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
any workweek.

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

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

26 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
28

1 Code § 1198 further states that the employment of an employee for longer hours than those
2 fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

26 67. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
29 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
30 to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

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

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

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

27 72. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
all time worked and provide them with the requisite overtime compensation, DEFENDANT
acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase company profits at the expense of these employees.

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

16 THIRD CAUSE OF ACTION

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

18 (Cal. Lab. Code §§ 226.7 & 512)

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

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

24 75. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
25 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
27 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
28 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

1 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
2 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
4 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
5 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice.

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

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

24 79. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
25 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
26 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
27 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
2 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
5 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

11 81. As a proximate result of the aforementioned violations, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
13 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
14

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

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

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

23 83. Cal. Labor Code § 226 provides that an employer must furnish employees within
24 "accurate itemized" statement in writing showing:

25 a. Gross wages earned;

26 b. Total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

84. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

12
13 **SIXTH CAUSE OF ACTION**

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

15 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

27 88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
28 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 to respond to work related issues. DEFENDANT's uniform policy,
5 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
6 CLASS members for expenses resulting from using their personal cellular phones for
7 DEFENDANT within the course and scope of their employment for DEFENDANT. These
8 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
9 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
10 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
11 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 89. PLAINTIFF therefore demand reimbursement for expenditures or losses
15 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
16 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
17 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

18
19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

27 91. Cal. Lab. Code § 200 provides that:
28

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

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

10 93. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

22 95. Cal. Lab. Code § 203 provides:

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

28 96. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
to these employees who actually worked overtime, as required by law.

97. 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 b. Violating Cal. Lab. Code §§ 1194, 1197, 1197.1 by failing to accurately pay
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for
3 all the time they work;
- 4 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
5 and the other members of the CALIFORNIA CLASS with all legally required
6 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
7 rest breaks;
- 8 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
10 statement in writing showing all accurate and applicable overtime rates in effect
11 during the pay period and the corresponding amount of time worked at each
12 overtime rate by the employee;
- 13 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS members with necessary expenses incurred in the
15 discharge of their job duties; and
- 16 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
17 employee is discharged or quits from employment, the employer must pay the
18 employee all wages due without abatement, by failing to tender full payment
19 and/or restitution of wages owed or in the manner required by California law to
20 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
21 their employment.

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

- 24 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
26 is impracticable and the disposition of their claims as a class will benefit the
27 parties and the Court;
- 28

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

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

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

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 DEFENDANT
15 uniformly failed to pay all wages due, including the correct overtime rate, for all
16 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
17 required by law;
- 18 c. Common questions of law and fact predominate as to the members of the
19 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
20 violations of California Law as listed above, and predominate over any question
21 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
22 Class Action is superior to other available methods for the fair and efficient
23 adjudication of the controversy, including consideration of:
 - 24 i. The interests of the members of the CALIFORNIA LABOR SUB-
25 CLASS in individually controlling the prosecution or defense of separate
26 actions in that the substantial expense of individual actions will be
27 avoided to recover the relatively small amount of economic losses
28 sustained by the individual CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

42. 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)

43. 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.

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

45. 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).

46. 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, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,

1 2802, 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 47. 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 48. 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 for overtime worked, failed to
13 accurately to record the applicable rate of all overtime worked, and failed to provide the
14 required amount of overtime compensation due to a systematic miscalculation of the overtime
15 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
16 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
17 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
18 including restitution of wages wrongfully withheld.

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

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

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

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 52. PLAINTIFF further demands on behalf of herself 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 53. 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 overtime worked,
9 and 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 54. 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 55. 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
21 unfair business practices, including earned but unpaid wages for all overtime worked.

22 56. 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 57. 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 is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

10 58. 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 59. 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 the applicable rates for all overtime worked by PLAINTIFF and other
17 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
18 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
19 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
any workweek.

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

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

26 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
28

1 Code § 1198 further states that the employment of an employee for longer hours than those
2 fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

26 67. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

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

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

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

27 72. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
all time worked and provide them with the requisite overtime compensation, DEFENDANT
acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase company profits at the expense of these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

24 75. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
25 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
27 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
28 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

1 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
2 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
4 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
5 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice.

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

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

24 79. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
25 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
26 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
27 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between, six (6) and eight (8) hours, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
2 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
5 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

14
15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Cal. Lab. Code § 226)**

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

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

23 83. Cal. Labor Code § 226 provides that an employer must furnish employees within
24 "accurate itemized" statement in writing showing:

25 a. Gross wages earned;

26 b. Total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

84. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

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

87. 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.

88. 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 to respond to work related issues. DEFENDANT's uniform policy,
5 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
6 CLASS members for expenses resulting from using their personal cellular phones for
7 DEFENDANT within the course and scope of their employment for DEFENDANT. These
8 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
9 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
10 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
11 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 89. PLAINTIFF therefore demand reimbursement for expenditures or losses
15 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
16 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
17 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

18
19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

27 91. Cal. Lab. Code § 200 provides that:
28

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

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

10 93. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

22 95. Cal. Lab. Code § 203 provides:

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

28 96. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
to these employees who actually worked overtime, as required by law.

97. 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 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 **Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
7 **Defendants)**

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

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

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

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

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

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

1 104. 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.

6 105. 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.

12 106. 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 DEFENDANT.

15 107. 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 that
17 they were entitled to, constituting a failure to pay all earned wages.

18 108. 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.

24 109. 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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22 **NINTH CAUSE OF ACTION**

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

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

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

26 112. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
27 herein, the prior paragraphs of this Complaint.

28 113. PAGA is a mechanism by which the State of California itself can enforce state

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

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

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

24 116. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
26 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
27 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
28 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and

1 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay
2 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
3 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
4 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and
5 applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct.
6 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
7 Attorney General Act of 2004 as the representative of the State of California for the illegal
8 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

17 PRAYER FOR RELIEF

18
19 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
26 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
27 withheld from compensation due to PLAINTIFFS and the other members of the
28 CALIFORNIA CLASS; and

- 1 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 4 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 5 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth
6 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
7 action pursuant to Cal. Code of Civ. Proc. § 382;
- 8 b. Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum wages, overtime compensation, and unreimbursed
10 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
12 PERIOD plus interest thereon at the statutory rate;
- 13 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
14 the applicable IWC Wage Order;
- 15 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
16 which a violation occurs and one hundred dollars (\$100) per member of the
17 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
18 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
19 an award of costs for violation of Cal. Lab. Code § 226; and
- 20 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
22 costs of suit; and,
- 23 f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
24 CLASS as a penalty from the due date thereof at the same rate until paid or until
25 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 26 3. On behalf of the State of California and with respect to all AGGRIEVED
27 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
28 Attorneys General Act of 2004

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

4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

DATED: _____, 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

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

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 **Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
7 **Defendants)**

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

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

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

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

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

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

1 104. 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.

6 105. 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.

12 106. 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 DEFENDANT.

15 107. 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 that
17 they were entitled to, constituting a failure to pay all earned wages.

18 108. 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.

24 109. 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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22 **NINTH CAUSE OF ACTION**

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

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

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

26 112. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
27 herein, the prior paragraphs of this Complaint.

28 113. PAGA is a mechanism by which the State of California itself can enforce state

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

10 114. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, bring this Representative Action on behalf of the State of California with respect to herself
13 and all individuals who are or previously were employed by DEFENDANT and classified as
14 non-exempt employees in California during the time period of October 16, 2019 until the
15 present (the "AGGRIEVED EMPLOYEES").

16 115. On October 16, 2020, PLAINTIFF gave written notice by certified mail to the
17 Labor and Workforce Development Agency (the "Agency") and the employer of the
18 specific provisions of this code alleged to have been violated as required by Labor Code §
19 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
20 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
21 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
22 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
23 to all AGGRIEVED EMPLOYEES as herein defined.

24 116. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
26 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
27 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
28 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and

1 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay
2 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
3 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
4 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and
5 applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct.
6 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
7 Attorney General Act of 2004 as the representative of the State of California for the illegal
8 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

17 **PRAYER FOR RELIEF**

18
19 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
26 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
27 withheld from compensation due to PLAINTIFFS and the other members of the
28 CALIFORNIA CLASS; and

- 1 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 4 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 5 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth Seventh, and Eighth
6 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
7 action pursuant to Cal. Code of Civ. Proc. § 382;
- 8 b. Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum wages, overtime compensation, and unreimbursed
10 expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
12 PERIOD plus interest thereon at the statutory rate;
- 13 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
14 the applicable IWC Wage Order;
- 15 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
16 which a violation occurs and one hundred dollars (\$100) per member of the
17 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
18 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
19 an award of costs for violation of Cal. Lab. Code § 226; and
- 20 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
22 costs of suit; and,
- 23 f. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
24 CLASS as a penalty from the due date thereof at the same rate until paid or until
25 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 26 3. On behalf of the State of California and with respect to all AGGRIEVED
27 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
28 Attorneys General Act of 2004

1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
- 6 and/or §2802.
- 7

8 DATED: December 22, 2020

9

10 **JCL LAW FIRM, APC**

11

12 By: 
13 Jean-Claude Lapuyade, Esq.
14 Attorney for Plaintiff

15 **DEMAND FOR A JURY TRIAL**

16

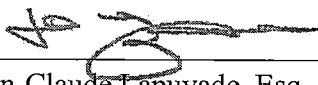
17 PLAINTIFF demands a jury trial on issues triable to a jury.

18 DATED: December 22, 2020

19

20 **JCL LAW FIRM, APC**

21

22 By: 
23 Jean-Claude Lapuyade, Esq.
24 Attorney for Plaintiff

25

26

27

28

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 #31601

October 16, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

URBAN ALCHEMY
c/o LENA MILLER
750 DARTMOUTH ST
SAN FRANCISCO CA 94134

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199 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 Nicolas Neutall ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against **Urban Alchemy**, a California corporation ("Defendants"). Plaintiff was employed by Defendant in California between May 2020 and July 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as minimum and overtime 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 §§ 2201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

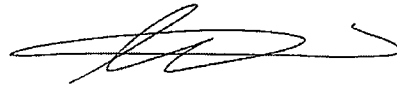
A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Sincerely,

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

Shani O. Zakay
Attorney for Nicolas Neutall

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

4 **JCL LAW FIRM, APC**
Jean-Claude Lapuyade (State Bar #248676)
5 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
6 Telephone: (619)599-8292; Facsimile: (619) 599-8291

7 Attorneys for Plaintiff

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF SAN FRANCISCO

10
11 NICOLAS NEUTALL, an individual, on
behalf of himself and on behalf of all persons
12 similarly situated,

13 Plaintiff,

14 v.

15 URBAN ALCHEMY, a California
Corporation; and DOES 1-50, Inclusive,

16 Defendants.
17
18
19
20
21
22

Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1
2 Plaintiff Nicolas Neutall ("PLAINTIFF"), an individual, on behalf of himself and all
3 other similarly situated current and former employees, alleges on information and
4 belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant Urban Alchemy ("DEFENDANT") is a California corporation and at
8 all relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT operates various non-profit programs assisting urban
11 communities in California.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from May 2020
14 to July 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANT in the form of non-discretionary
incentive wages.

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

24 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice
27 which failed to lawfully compensate these employees for all their time worked, including
28 overtime. DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and

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

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

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

24 THE CONDUCT

25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
26 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
28 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the

1 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
2 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
3 forfeited wages due them for working overtime without compensation at the correct overtime
4 rates. DEFENDANT's uniform policy and practice to not pay the members of the
5 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
6 applicable law is evidenced by DEFENDANT's business records.

7 9. State law provides that employees must be paid overtime at one-and-one-
8 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members
9 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
10 employee's performance.

11 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
12 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
13 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
14 performance for DEFENDANT. The non-discretionary incentive program provided all
15 employees paid on an hourly basis with incentive compensation when the employees met the
16 various performance goals set by DEFENDANT. However, when calculating the regular rate of
17 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
18 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
19 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
20 the incentive program to potential and new employees as part of the compensation package. As
21 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
22 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
23 in a systematic underpayment of overtime compensation to PLAINTIFF and other
24 CALIFORNIA CLASS Members by DEFENDANT.

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

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

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

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

1 Members were periodically denied their proper rest periods by DEFENDANT and
2 DEFENDANT's managers.

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

14 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
15 CLASS Members as a business expense, were required by DEFENDANT to use their own
16 personal cellular phones as a result of and in furtherance of their job duties as employees for
17 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
18 associated with the use of their personal cellular phones for DEFENDANT's benefit.
19 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
20 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
21 course of their employment with DEFENDANT the PLAINTIFF and other members of the
22 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
23 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
24 benefit of DEFENDANT.

25 16. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
26 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
27 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
28 CLASS with complete and accurate wage statements which failed to show, among other things,

1 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
2 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
3 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
4 furnish each of his or her employees with an accurate itemized wage statement in writing
5 showing, among other things, gross wages earned and all applicable hourly rates in effect during
6 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
7 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
10 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

11 17. By reason of this uniform conduct applicable to PLAINTIFF and all
12 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
13 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
14 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
15 accurately calculate and record the correct overtime rate for the overtime worked by
16 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
17 employees’ overtime hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
18 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
19 calculate and/or pay all required overtime compensation for work performed by the members of
20 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
21 thereunder as herein alleged.

22 18. Specifically as to PLAINTIFF’S pay, DEFENDANT provided compensation to
23 him in the form of two components. One component of PLAINTIFF’S compensation was a base
24 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary
25 incentive wages earned for working certain shifts. DEFENDANT paid the incentive wages, so
26 long as PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
27 DEFENDANT’s predefined eligibility performance requirements in various pay periods
28 throughout his employment with DEFENDANT and DEFENDANT paid PLAINTIFF the

1 incentive wages. During these pay periods in which PLAINTIFF was paid the non-discretionary
2 incentive wages by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but
3 DEFENDANT never included the incentive compensation in PLAINTIFF'S regular rate of pay
4 for the purposes of calculating what should have been PLAINTIFF'S accurate overtime rate and
5 thereby underpaid PLAINTIFF for overtime worked throughout her employment with
6 DEFENDANT. The incentive compensation paid by DEFENDANT constituted wages within
7 the meaning of the California Labor Code and thereby should have been part of PLAINTIFF'S
8 "regular rate of pay." PLAINTIFF was also from time to time unable to take off duty meal and
9 rest breaks and was not fully relieved of duty for his meal periods, resulting in off-the-clock
10 work and unpaid minimum wages. PLAINTIFF was required to perform work as ordered by
11 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
12 break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
13 each workday in which he was required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
15 accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT also
16 provided PLAINTIFF with a paystub that failed to accurately display PLAINTIFF'S correct
17 rates of overtime pay and payments for missed meal and rest periods for certain pay periods in
18 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the
19 overtime compensation still owed to them or any penalty wages owed to them under Cal. Lab.
20 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
21 or value of \$75,000.

22 JURISDICTION AND VENUE

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

27 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times

1 maintained offices and facilities in this County and/or conducts substantial business in this
2 County, and (ii) committed the wrongful conduct herein alleged in this County against members
3 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

4 **THE CALIFORNIA CLASS**

5 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
7 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
8 individuals who are or previously were employed by DEFENDANT in California and classified
9 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
10 beginning four years from the filing of this complaint and ending on the date as determined by
11 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
12 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
13 (\$5,000,000.00).

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

17 23. The California Legislature has commanded that "all wages... ..earned by any
18 person in any employment are due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
20 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
21 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
22 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
23 however, is statutorily authorized to "establish exemptions from the requirement that an
24 overtime rate of compensation be paid... ..for executive, administrative, and professional
25 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
26 test of the exemption, [and] customarily and regularly exercises discretion and independent
27 judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
28

1 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
2 qualify for exemption from the above requirements.

3 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
7 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other
8 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
9 work, required employees to perform this work and permitted or suffered to permit this
10 overtime work.

11 25. DEFENDANT has the legal burden to establish that each and every
12 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
13 accurately calculate the “regular rate of pay” by including the incentive compensation that
14 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
15 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
16 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
17 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
18 overtime rate for all overtime worked, so as to satisfy their burden. This common business
19 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
20 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
21 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
22 claim.

23 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
24 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
25 employee for all overtime worked at the applicable rate, as required by California Labor Code
26 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
27 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
28

1 as to include all earnings in the overtime compensation calculation as required by California
2 Labor Code §§ 510, *et seq.*

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

5 28. 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, including overtime, and failed to
11 accurately record the applicable rates of all overtime worked by the
12 CALIFORNIA CLASS;

13 b. Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
15 unfairly, and/or deceptively having in place a company policy, practice and
16 procedure that failed to correctly calculate overtime compensation due to
17 PLAINTIFF and the members of the CALIFORNIA CLASS;

18 c. Committing an act of unfair competition in violation of the California Unfair
19 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
20 provide mandatory meal and/or rest breaks to PLAINTIFF and the
21 CALIFORNIA CLASS members;

22 d. Committing an act of unfair competition in violation of the California Unfair
23 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
24 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
25 CLASS members with necessary expenses incurred in the discharge of their job
26 duties.

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

- 1 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
2 joinder of all such persons is impracticable and the disposition of their claims as
3 a class will benefit the parties and the Court;
- 4 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
5 raised in this Complaint are common to the CALIFORNIA CLASS will apply
6 uniformly to every member of the CALIFORNIA CLASS;
- 7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
9 of the CALIFORNIA CLASS, was subjected to the uniform employment
10 practices of DEFENDANT and was a non-exempt employee paid on an hourly
11 basis and paid additional non-discretionary incentive wages who was subjected
12 to the DEFENDANT's practice and policy which failed to pay the correct rate of
13 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
14 CALIFORNIA CLASS and thereby systematically under pays overtime
15 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
16 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
17 members of the CALIFORNIA CLASS were and are similarly or identically
18 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
19 misconduct engaged in by DEFENDANT; and
- 20 d. The representative PLAINTIFF will fairly and adequately represent and protect
21 the interest of the CALIFORNIA CLASS, and has retained counsel who are
22 competent and experienced in Class Action litigation. There are no material
23 conflicts between the claims of the representative PLAINTIFF and the members
24 of the CALIFORNIA CLASS that would make class certification inappropriate.
25 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
26 CALIFORNIA CLASS Members.
- 27 30. In addition to meeting the statutory prerequisites to a Class Action, this action is
28 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

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

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

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

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

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

31. 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;

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

10 32. DEFENDANT maintains records from which the Court can ascertain and
11 identify by job title each of DEFENDANT's employees who as have been systematically,
12 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
13 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
14 any additional job titles of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
28 compensation for the overtime worked by PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
2 work, required employees to perform this work and permitted or suffered to permit this
3 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
4 CLASS Members overtime wages at the correct amount to which these employees are entitled
5 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
7 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

8 35. DEFENDANT maintains records from which the Court can ascertain and
9 identify by name and job title, each of DEFENDANT's employees who have been
10 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
11 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
12 to include any additional job titles of similarly situated employees when they have been
13 identified.

14 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 18 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
19 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
20 violation of the California Labor Code and California regulations and the
21 applicable California Wage Order;
- 22 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
23 to compensation for time worked, including overtime worked, under the overtime
24 pay requirements of California law;
- 25 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
26 for all overtime worked PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS;

- 1 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
3 thirty (30) minute meal breaks and rest periods;
4 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
6 statements;
7 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
8 conduct;
9 g. The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and
11 h. Whether DEFENDANT's conduct was willful.

12 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
13 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
14 Members and failed to provide accurate records of the applicable overtime rates for the
15 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
16 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
17 basis by DEFENDANT according to uniform and systematic company procedures as alleged
18 herein above. This business practice was uniformly applied to each and every member of the
19 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
20 adjudicated on a class-wide basis.

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

- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
25 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
26 Code § 1194 & § 1198;

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Jean-Claude Lapuyade, Esq. (SBN 248676)
 JCL Law Firm, APC
 3990 Old Town Avenue, Suite C204
 San Diego, CA 92110

TELEPHONE NO.: 619-599-8292

FAX NO.: 619-599-8291

ATTORNEY FOR (Name): Plaintiff

FILED
 San Francisco County Superior Court

DEC 23 2020

CLERK OF THE COURT

BY: Skalene Volanis
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS: 400 McAllister Street

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civic Center Courthouse

CASE NAME:

Nicolas Neutall v. Urban Alchemy, et al.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
 (Amount (Amount
 demanded demanded is
 exceeds \$25,000) \$25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 000-20-588622

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): VIOLATION OF CA BUS. & PROF. CODE §§ 17200, et seq., et al.

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 22, 2020

Jean-Claude Lapuyade, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

VIA FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition