

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

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

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GABRIEL MENDEZ, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

FILED
SUPERIOR COURT-STOCKTON

200 SEP -9 PM 4:05

BRANDON E. RILEY, CLERK

BY BRANDON E. RILEY
DEPUTY

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 Joaquin Superior Court
180 E Weber Ave
Stockton, California 95202

CASE NUMBER
(NÚMERO)

STK-CV-005-2020-7486

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) JCL Law Firm, APC
3990 Old Town Avenue, Suite C204, San Diego, CA 92110 T: 619-599-8292 F: 619-599-8291

DATE:
(Fecha)

SEP 09 2020

BRANDON E. RILEY

Clerk, by
(Secretario)

Deputy
(Adjunto)

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

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

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

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

VIA FAX

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Attorneys for Plaintiff

GABRIEL MENDEZ

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

GABRIEL MENDEZ, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

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

Defendants.

Case No: STK-CV-008-2020-7486

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 7) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 8) FAILURE TO PAY VACATION WAGES DUE;
- 9) UNLAWFUL DEDUCTIONS; and
- 10) VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

FILED
SUPERIOR COURT-STOCKTON
2020-08-13 PM 4:07
BRANDON E. RILEY, CLERK
BY JESSICA JAYO
DEPUTY

VIA FAX

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

5 **THE PARTIES**

6 1. PLAINTIFF is a California resident. PLAINTIFF at all relevant time periods
7 mentioned herein worked and drove a truck in California for Defendant BONDZ, INC.
8 (“DEFENDANT”) from October 2018 to March 2020. As a Truck Driver, PLAINTIFF’s work
9 required the performance of manual labor consisting of driving DEFENDANT’s trucks and
10 transporting goods within the State of California. In performing these duties, PLAINTIFF did
11 not utilize any independent discretion, judgment, or management decisions with respect to
12 matters of significance. To the contrary, the work of PLAINTIFF as a Truck Driver was to
13 provide on a daily basis the transportation of goods in accordance with the management
14 decisions and business policies established by DEFENDANT. As a result, PLAINTIFF was
15 entitled to be paid minimum wages, overtime wages, accurate wage statements, and meal and
16 rest periods as required by California law. PLAINTIFF was paid by piece-rate only while he
17 was employed as a Truck Driver for DEFENDANT. Importantly, he was not provided with
18 minimum wages for his non-production work time. PLAINTIFF also did not receive paid rest
19 breaks as required by California law and DEFENDANT failed to provide PLAINTIFF with the
20 legally required meal periods. DEFENDANT failed to pay PLAINTIFF the correct amount of
21 compensation because DEFENDANT established an illegal pay practice of paying PLAINTIFF
22 on a piece rate basis based on the miles driven by PLAINTIFF on behalf of DEFENDANT.
23 DEFENDANT however failed to pay minimum wages for compensable time worked. To date,
24 DEFENDANT has not fully paid PLAINTIFF for all his wages still owed to him or any penalty
25 wages owed to him under California Labor Code § 203. The amount in controversy for
26 PLAINTIFF individually does not exceed the sum or value of \$75,000.

27 2. DEFENDANT is a California corporation that at all relevant times mentioned
28 herein conducted and continues to conduct substantial and regular business throughout the State
of California. DEFENDANT’s operations are based out of the City of Tracy in the County of
San Joaquin.

1 3. Defendant is one of the largest producing trucking contractors for FedEx Ground,
2 and has operations in multiple states, including California.

3 4. PLAINTIFF brings this class action on behalf of himself and a California class,
4 defined as all individuals who are or previously were employed by DEFENDANT as a Truck
5 Driver (the "CALIFORNIA CLASS") at any time during the period beginning April 6, 2016 and
6 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

7 5. 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 6. 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.

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THE CONDUCT

7. The work required to be performed by PLAINTIFF and the other CALIFORNIA CLASS Members was manual labor consisting of driving DEFENDANT's trucks and transporting goods within the State of California in accordance with DEFENDANT's policies and practices. As a result of this work, PLAINTIFF and the other CALIFORNIA CLASS Members were involved in providing day to day routine transportation of goods as specified by DEFENDANT and this work was executed by the performance of manual labor within a defined skill set. PLAINTIFF and CALIFORNIA CLASS Members were not compensated through a monthly salary. PLAINTIFF and the other CALIFORNIA CLASS Members employed by DEFENDANT performed these manual tasks but were not paid the minimum wages to which they were entitled because of DEFENDANT's systematic policies and practices of failing to correctly record all time worked, including, but not limited to, time spent during pre and post trip inspections of DEFENDANT's trucks, fueling, hooking and unhooking, and time spent waiting for DEFENDANT's loads to be ready for transport. DEFENDANT failed to correctly pay minimum wages to PLAINTIFF and the other CALIFORNIA CLASS Members in accordance with California law, and thereby systematically underpaid minimum compensation to PLAINTIFF and the other CALIFORNIA CLASS Members for their documented time worked.

8. Individuals in these Truck Driver positions are and were employees who are entitled to minimum wage compensation and prompt payment of amounts that the employer owes an employee when the employee quits or is terminated, and other compensation and working conditions that are prescribed by law.

9. Industrial Welfare Commission Wage Order 4-2001 provides: "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage Order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to

1 do so.” Here, PLAINTIFF and CALIFORNIA CLASS Members are entitled to separate hourly
2 compensation for time spent performing other non-driving tasks, including but not limited, to
3 pre and post trip inspections of DEFENDANT’s vehicles, fueling DEFENDANT’s vehicles and
4 waiting for DEFENDANT’s trucks to be ready to transport the product. DEFENDANT failed to
5 correctly pay minimum wages to PLAINTIFF and the other CALIFORNIA CLASS Members in
6 accordance with California law, and thereby systematically underpaid minimum wage
7 compensation to PLAINTIFF and the other CALIFORNIA CLASS Members for their
8 documented time worked. Specifically, DEFENDANT only paid PLAINTIFF and other Truck
9 Drivers a flat amount per mile the Truck Drivers drove on behalf of DEFENDANT.
10 PLAINTIFF and other Truck Drivers were not compensated for any of their time spent working
11 other than the flat piece rate for each mile driven on DEFENDANT’s behalf. DEFENDANT
12 suffered and permitted PLAINTIFF and other CALIFORNIA CLASS Members to work and
13 required these employees to remain under DEFENDANT’s control without paying them, which
14 resulted in PLAINTIFF and other CALIFORNIA CLASS Members earning less than the legal
15 minimum wage in the State of California. PLAINTIFF and other CALIFORNIA CLASS
16 Members performed a variety of work-related tasks for which they were not paid.

17 10. State law provides that employees must be paid overtime at one-and-one-
18 halftimes their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members
19 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
20 employee’s performance.

21 11. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
22 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
23 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
24 performance for DEFENDANT. The non-discretionary incentive program provided all
25 employees paid on an hourly basis with incentive compensation when the employees met the
26 various performance goals set by DEFENDANT. However, when calculating the regular rate of
27 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
28 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular

1 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
2 the incentive program to potential and new employees as part of the compensation package. As
3 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
4 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
5 in a systematic underpayment of overtime compensation to PLAINTIFF and other
6 CALIFORNIA CLASS Members by DEFENDANT.

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

17 13. In addition, DEFENDANT failed to provide all the legally required unpaid, off-
18 duty meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFF and
19 the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor
20 Code. DEFENDANT did not have a policy or practice which provided or recorded all the
21 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
22 periods to the PLAINTIFF and the other CALIFORNIA CLASS Members. As a result,
23 DEFENDANT’s failure to provide the PLAINTIFF and the CALIFORNIA CLASS Members
24 with all the legally required off-duty, unpaid meal periods and all the legally required off-duty,
25 paid rest periods is evidenced by DEFENDANT’s business records. DEFENDANT had a
26 pattern and practice of establishing and scheduling routes to be completed in overly demanding
27 time frames which resulted in DEFENDANT pressuring, discouraging, and impeding
28 PLAINTIFF and other CALIFORNIA CLASS Members to complete their routes within the

1 rigorous time frames and not take meal breaks. Because of DEFENDANT's demanding policies
2 on route completion times, PLAINTIFF and other CALIFORNIA CLASS Members felt that
3 breaking route to exercise their rights to take meal and/or rest periods would sacrifice their jobs
4 with DEFENDANT. As such, PLAINTIFF and other CALIFORNIA CLASS Members
5 routinely worked through their meal periods.

6 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
7 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
8 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
9 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
10 from time to time, a first and second rest period of at least ten (10) minutes for some shifts
11 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
12 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
13 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
14 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
15 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
16 periods by DEFENDANT and DEFENDANT's managers. In addition, because of
17 DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a
18 flat rate per-ride only), DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA
19 CLASS Members for their rest periods as required by the applicable Wage Order and Labor
20 Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
21 PLAINTIFF and the other CALIFORNIA CLASS Members when they were paid piece rate pay
22 only. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
23 CLASS Members with all the legally required paid rest periods is evidenced by
24 DEFENDANT's business records.

25 15. From time to time, DEFENDANT also failed to provide the PLAINTIFF and the
26 other members of the CALIFORNIA CLASS with complete and accurate wage statements
27 which failed to show, among other things, the employee ID number, the rate and number of
28 miles driven for the piece-rate compensation, the complete address for DEFENDANT, the

1 correct minimum wages for time worked, including, allocation of lawfully required, paid, and
2 off-duty rest periods, and the correct overtime rate. Cal. Lab. Code § 226 provides that every
3 employer shall furnish each of his or her employees with an accurate itemized wage statement in
4 writing showing, among other things, gross wages earned and all applicable hourly rates in
5 effect during the pay period and the corresponding amount of time worked at each hourly rate.
6 As a result, DEFENDANT provided the PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

8 16. Further, upon PLAINTIFF's and CALIFORNIA CLASS Members' separation of
9 employment, they had not used all of their vested vacation and thus their unused, vested
10 vacation was required to have been paid at their final rate upon separation of employment.
11 DEFENDANT, however failed to pay the vested vacation time, and when it did, it paid it at the
12 wrong rate. As a result, DEFENDANT violated Labor Code §227.3.

13 17. Further, DEFENDANT unlawfully deducted wages from PLAINTIFF and
14 CALIFORNIA CLASS Members' pay for health insurance without authorization to do so or
15 notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
16 violated Labor Code § 221.

17 18. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA CLASS,
18 seeks to recover all the compensation that DEFENDANT is required by law to provide, but
19 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS Members. PLAINTIFF
20 also seeks penalties and all other relief available to him and other CALIFORNIA CLASS
21 Members under California law. Finally, PLAINTIFF seeks declaratory relief finding that the
22 employment practices and policies of the DEFENDANT violated California law and injunctive
23 relief to enjoin the DEFENDANT from continuing to engage in such employment practices.

24 19. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct
25 and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the
26 other members of the CALIFORNIA CLASS of money and career opportunities to which they
27 were lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have
28 adequate employment policies and maintaining adequate employment practices consistent with

1 such policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged
2 caused the money belonging to the PLAINTIFF and the other members of the CALIFORNIA
3 CLASS to be kept by DEFENDANT and thereby converted by DEFENDANT for
4 DEFENDANT's own use.

5 20. DEFENDANT's practices violated and continue to violate the law, regardless of
6 whether the employees' work is paid by commission, by salary, by piece rate, or by part
7 commission, part piece rate, and/or part salary. As a result of this policy and practice,
8 DEFENDANT failed to pay minimum wage pay in accordance with applicable law.

9 21. Accordingly, DEFENDANT committed acts of unfair competition in violation of
10 the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by engaging
11 in company-wide policies that violated the California Labor Code and regulations promulgated
12 thereunder as herein alleged.

13 14 **THE CALIFORNIA CLASS**

15 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
18 individuals who are or previously were employed by DEFENDANT in California as a Truck
19 Driver employee (the "CALIFORNIA CLASS") at any time during the period beginning on
20 April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS
21 PERIOD").

22 23. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
24 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 willfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive
26 method to calculate minimum, and payment for missed meal periods and off-duty rest breaks
27 owed to the PLAINTIFF and the other members of the CALIFORNIA CLASS.
28

1 24. All CALIFORNIA CLASS Members, including the PLAINTIFF, performed the
2 same manual labor and were paid by DEFENDANT according to uniform and systematic
3 company procedures, which, as alleged herein above, and failed to correctly pay minimum
4 wages. This business practice is uniformly applied to each and every member of the
5 CALIFORNIA CLASS, and therefore, the propriety of these business practices can be
6 adjudicated on a class-wide basis.

7 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
8 California law by:

- 9 a. Committing an act of unfair competition in violation of the California Unfair
10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
11 unfairly and deceptively having in place company policies, practices and
12 procedures that uniformly denied PLAINTIFF and the members of the
13 CALIFORNIA CLASS the correct minimum wages, overtime wages, and
14 otherwise violated applicable law;
- 15 b. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
16 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in
17 place company policies, practices and procedures that uniformly and
18 systematically fail to provide and record all the legally required unpaid, off-duty
19 meal periods and all the legally required paid, off-duty rest periods to the
20 PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

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

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

23 i. The interests of the members of the CALIFORNIA CLASS in
24 individually controlling the prosecution or defense of separate actions;

25 ii. The extent and nature of any litigation concerning the controversy already
26 commenced by or against members of the CALIFORNIA CLASS;

27 iii. The desirability or undesirability of concentrating the litigation of the
28 claims in the particular forum;

- 1 iv. The difficulties likely to be encountered in the management of a Class
2 Action; and,
3 v. The basis of DEFENDANT's conduct towards PLAINTIFF and the
4 CALIFORNIA CLASS.

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

- 7 a. The questions of law and fact common to the CALIFORNIA CLASS
8 predominate over any question affecting only individual CALIFORNIA CLASS
9 Members because the DEFENDANT's employment practices were uniform and
10 systematically applied with respect to the CALIFORNIA CLASS.
11 b. A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA CLASS because
13 in the context of employment litigation a substantial number of individual
14 CALIFORNIA CLASS Members will avoid asserting their rights individually
15 out of fear of retaliation or adverse impact on their employment;
16 c. The members of the CALIFORNIA CLASS are so numerous that it is
17 impractical to bring all members of the CALIFORNIA CLASS before the Court;
18 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
19 obtain effective and economic legal redress unless the action is maintained as a
20 Class Action;
21 e. There is a community of interest in obtaining appropriate legal and equitable
22 relief for the acts of unfair competition, statutory violations and other
23 improprieties, and in obtaining adequate compensation for the damages and
24 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
25 CLASS;
26 f. There is a community of interest in ensuring that the combined assets of
27 DEFENDANT are sufficient to adequately compensate the members of the
28 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 29. DEFENDANT maintains records from which the Court can ascertain and
11 identify by name and job title each of DEFENDANT's employees who as have been
12 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
13 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
14 to include any additional job titles of similarly situated employees when they have been
15 identified.

16
17 **THE CALIFORNIA LABOR SUB-CLASS**

18 30. PLAINTIFF further brings the Second, Third, Fourth Fifth, and Sixth causes of
19 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
20 CLASS who were employed by DEFENDANT in California as Truck Driver employee (the
21 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning April 6, 2017
22 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
23 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

24 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS
26 PERIOD should be adjusted accordingly.

27 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

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

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

- 14 a. Whether DEFENDANT unlawfully failed to pay minimum wage compensation
15 to members of the CALIFORNIA LABOR SUBCLASS in violation of the
16 California Labor Code and applicable regulations;
- 17 b. Whether DEFENDANT unlawfully failed to pay overtime compensation to
18 members of the CALIFORNIA LABOR SUBCLASS at the correct rate, in
19 violation of the California Labor Code and applicable regulations
- 20 c. Whether DEFENDANT's policy and practice of failing to pay CALIFORNIA
21 LABOR SUBCLASS Members wages, including minimum wages for all time
22 worked, violates applicable provisions of California law;
- 23 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay
24 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
25 missed meal and rest breaks in violation of the California Labor Code and
26 California regulations and the applicable California Wage Order;
- 27 e. Whether DEFENDANT unlawfully failed to keep and furnish CALIFORNIA
28 LABOR SUBCLASS Members with accurate records of time worked; and

1 f. Whether DEFENDANT's conduct was willful.

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

- 4 a. Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording time worked
5 and thereby failing to pay PLAINTIFF and the members of the CALIFORNIA
6 LABOR SUBCLASS the correct minimum wage pay for which DEFENDANT is
7 liable pursuant to Cal. Lab. Code § 1197
- 8 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
10 correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab.
11 Code § 1194 & § 1198;
- 12 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
13 and the other members of the CALIFORNIA CLASS with all legally required
14 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
15 paid rest breaks
- 16 d. Violating Cal. Lab. Code § 226(a) by failing to provide the PLAINTIFF and the
17 CALIFORNIA LABOR SUBCLASS Members with an accurate itemized
18 statement in writing showing the gross wages earned, the net wages earned, all
19 applicable hourly rates in effect during the pay period and the corresponding
20 amount of time worked at each hourly rate by the employee, the employee codes,
21 and the complete address for DEFENDANT; and,
- 22 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
23 employee is discharged or quits from employment, the employer must pay the
24 employee all wages due without abatement, by failing to tender full payment
25 and/or restitution of wages owed or in the manner required by California law to
26 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
27 their employment.
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1 35. This Class Action meets the statutory prerequisites for the maintenance of a
2 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

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

22 c. Common questions of law and fact predominate as to the members of the
23 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
24 violations of California Law as listed above, and predominate over any question
25 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
26 Class Action is superior to other available methods for the fair and efficient
27 adjudication of the controversy, including consideration of:
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- i. The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA LABOR SUBCLASS;
- iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- iv. The difficulties likely to be encountered in the management of a Class Action; and,
- v. The basis of DEFENDANT's conduct towards PLAINTIFF and the CALIFORNIA LABOR SUBCLASS.

37. This 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 LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- 1 e. There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
5 LABOR SUB-CLASS;
- 6 f. There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
10 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
11 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 12 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The CALIFORNIA
14 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
15 employed by DEFENDANT in California during the CALIFORNIA LABOR
16 SUB-CLASS PERIOD; and
- 17 i. Class treatment provides manageable judicial treatment calculated to bring an
18 efficient and rapid conclusion to all litigation of all wage and hour related claims
19 arising out of the conduct of DEFENDANT as to the members of the
20 CALIFORNIA LABOR SUB-CLASS.

21 38. DEFENDANT maintains records from which the Court can ascertain and
22 identify by name and job title, each of DEFENDANT's employees who have been
23 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,
24 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
25 to include any additional job titles of similarly situated employees when they have been
26 identified.

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

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

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41. 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.

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

43. 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).

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

1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 201, 202, 203, 204, 221, 226, 226.2, 226.7, 227.3, 510, 512, 558, 1194, 1197,
3 1197.1, and 1198, for which this Court should issue declaratory and other equitable relief
4 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
5 conduct held to constitute unfair competition, including restitution of wages wrongfully
6 withheld.

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

13 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of
15 compensation for missed meal and rest breaks, and failed to adequately compensate
16 PLAINTIFF and CALIFORNIA CLASS Members for all non-production time, due to a
17 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
18 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
19 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
20 & Prof. Code § 17203, including restitution of wages wrongfully withheld. The work schedule
21 for the PLAINTIFF and other CALIFORNIA CLASS Members was set by DEFENDANT.

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

26 48. By the conduct alleged herein, DEFENDANT's practices were also unfair and
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
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1 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
2 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

3 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
5 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
6 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
8 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
9 engage in these unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

24 59. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
26 than the minimum so fixed is unlawful.

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

1 61. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they worked, including time spent engaging in non-driving related tasks. As set
4 forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally
5 deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA
6 LABOR SUB-CLASS.

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

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

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

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

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

3 67. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
5 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
7 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
8 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
9 correct minimum wages for their time worked.

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

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

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

9 71. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
10 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
11 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
12 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
13 did not prevent these employees from being relieved of all of their duties for the legally required
14 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
15 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
16 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
17 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
18 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.

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

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

**FAILURE TO PROVIDE REQUIRED REST PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

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

74. 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.

75. In addition, because of DEFENDANT's compensation pay plan described herein, DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

76. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that rest period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code § 226)**

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

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

13 79. Cal. Labor Code § 226 provides that an employer must furnish employees with
14 an "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order
19 of the Industrial Welfare Commission,
- 20 c. the number of piecerate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of
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an employee identification number other than 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.

80. From time to time, DEFENDANT violated Labor Code § 226(a), in that DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the employee, the employee ID for PLAINTIFF, and the complete address for DEFENDANT. DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct wages for time worked, including, allocation of lawfully required, paid, and off-duty 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. As a result, DEFENDANT provided the PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

81. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks 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

1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN DUE**

5 **(Cal. Lab. Code § 203)**

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

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

11 83. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

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

22 85. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

87. Cal. Lab. Code § 203 provides:

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

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

88. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of wages to these employees as required by law.

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

SEVENTH CAUSE OF ACTION

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

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

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

91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

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

22 97. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
24 consequently underpaid the actual time worked by PLAINTIFF and other members of the
25 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
26 payment of all earned wages, and other benefits in violation of the California Labor Code, the
27 Industrial Welfare Commission requirements and other applicable laws and regulations.
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1 98. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive full compensation for all overtime worked.

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

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

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

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

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

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

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

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

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EIGHTH CAUSE OF ACTION

For Failure to Pay Vacation Wages

(By Plaintiffs and Vacation Subclass Members Against Defendant)

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

107. At all relevant times, California Labor Code §227.3 provides for the following:

Unless otherwise Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

108. At all times relevant, including at times throughout the four-year period preceding the filing of the original complaint, PLAINTIFF, and upon information and belief, and CALIFORNIA LABOR SUB-CLASS Members were subject to an employer policy and/or contract of employment that provided for paid vacations not otherwise provided by a collective-bargaining agreement. Upon PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' separation of employment, they had not used all of their vested vacation and thus their unused, vested vacation was required to have been paid at their final rate upon separation of employment. As a result of the miscalculation, Defendants violated Labor Code §227.3.

109. PLAINTIFF seeks, on her behalf and on behalf of the CALIFORNIA LABOR SUB-CLASS, all damages and remedies available under California Labor Code §227.3, including payment of the vacation wages at the final rate.

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TENTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
[Cal. Lab. Code §§ 2698 et seq.]
(Alleged by PLAINTIFF against all Defendants)

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

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

119. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of July 1, 2019 until the present (the "AGGRIEVED EMPLOYEES").

120. On July 1, 2020, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under

1 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
2 AGGRIEVED EMPLOYEES as herein defined.

3 121. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
6 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
7 failed to provide accurate itemized wage statements, (d) failed to reimburse PLAINTIFF and
8 other AGGRIEVED EMPLOYEES for required business expenses, and (e) failed to timely pay
9 wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
10 including but not limited to Labor Code §§ 201, 202, 203, 204, 221, 223, 226(a), 226, 226.2,
11 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and applicable wage
12 orders, and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
13 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
14 General Act of 2004 as the representative of the State of California for the illegal conduct
15 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage compensation, overtime compensation, vacation time and unlawful deductions due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

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.

DATED: September 4, 2020

THE JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 4, 2020

THE JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

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EXHIBIT 1