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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 **20STCV17782**

15 VIKIEA MCKAMIE, an individual, on behalf
16 of herself and on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

20 ICES EDUCATION, LLC, a California
21 Limited Liability Company; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

BY FAX

MAY 06 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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

4
5 **THE PARTIES**

6 1. Defendant Ices Education, LLC (“DEFENDANT”) is a California limited liability
7 company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. Established in 1981, DEFENDANT is one of California's oldest established
10 providers of After School & Out-of-School learning programs.

11 3. PLAINTIFF was employed by DEFENDANT in California as an after school
12 program leader from August of 2018 to June of 2019 and was at all times classified by
13 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
14 required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.

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

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

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

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

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

23 24 **THE CONDUCT**

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. From time to time, DEFENDANT required PLAINTIFF and
3 CALIFORNIA CLASS Members to work off the clock without paying them for all the time
4 they were under DEFENDANT's control performing post-shift duties, specifically by failing
5 to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
6 PLAINTIFF and CALIFORNIA CLASS Members to complete. PLAINTIFF and
7 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
8 order to perform additional work for DEFENDANT, including but not limited to, cleaning and
9 vacuuming the classrooms, as required to meet DEFENDANT's job requirements. As a result,
10 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working
11 without their time being accurately recorded and without compensation at the applicable
12 minimum wage and overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF
13 and other CALIFORNIA CLASS Members for all time worked is evidenced by
14 DEFENDANT's business records. DEFENDANT knew or should have known that
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were working
16 off the clock and were under compensated for their time worked.

17 9. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
19 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
20 other CALIFORNIA CLASS Members were required from time to time to perform work as
21 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
22 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
23 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
24 which these employees were required by DEFENDANT to work ten (10) hours of work.
25 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
26 without additional compensation and in accordance with DEFENDANT's corporate policy and
27 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
28 production levels for each employee at the busy airports they operated at.

1 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
3 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
4 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
5 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
6 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
7 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
8 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
9 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
10 Order requires employers to provide employees with off-duty rest periods, which the California
11 Supreme Court defined as time during which an employee is relieved from all work related
12 duties and free from employer control. In so doing, the Court held that the requirement under
13 California law that employers authorize and permit all employees to take rest period means that
14 employers must relieve employees of all duties and relinquish control over how employees
15 spend their time which includes control over the locations where employees may take their rest
16 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
17 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
18 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
19 DEFENDANT's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members
20 could not leave the work premises during their rest period.

21 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
22 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
23 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
24 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
25 all time worked, meaning the time during which an employee was subject to the control of an
26 employer, including all the time the employee was permitted or suffered to permit this work.
27 DEFENDANT required these employees to work off the clock without paying them for all the
28 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have

1 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
2 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited time worked by working without their time being accurately recorded and
4 without compensation at the applicable minimum wage and overtime wage rates. To the extent
5 that the time worked off the clock did not qualify for overtime premium payment,
6 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
7 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

8 12. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA CLASS with complete and accurate wage statements
10 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
11 Code § 226 provides that every employer shall furnish each of his or her employees with an
12 accurate itemized wage statement in writing showing, among other things, gross wages earned
13 and all applicable hourly rates in effect during the pay period and the corresponding amount of
14 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
15 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
16 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
17 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
18 statements which violated Cal. Lab. Code § 226.

19 13. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
21 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
23 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
24 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
25 over competitors who complied with the law. To the extent equitable tolling operates to toll
26 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
27 PERIOD should be adjusted accordingly.

28 14. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA

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

10 15. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
11 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
12 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT
13 did not have a policy or practice which provided timely off-duty meal and rest breaks to
14 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
15 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
16 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
17 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
18 DEFENDANT’s business records. As a result of DEFENDANT not accurately recording all
19 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
20 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
21 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
22 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
23 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
24 the sum or value of \$75,000.

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1 to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS
2 Members, even though DEFENDANT enjoyed the benefit of this work, required employees to
3 perform this work and permits or suffers to permit this work.

4 21. DEFENDANT has the legal burden to establish that each and every
5 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
6 required by California laws. The DEFENDANT, however, failed to have in place during the
7 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
8 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
9 business practice is applicable to each and every CALIFORNIA CLASS Member can be
10 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
11 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
12 elements of this claim.

13 22. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 23. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
16 law by:

17 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
18 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that failed to record and pay PLAINTIFF and the other members of the
21 CALIFORNIA CLASS for all time worked, including minimum wages
22 owed and overtime wages owed for work performed by these employees;
23 and,

24 (b) Committing an act of unfair competition in violation of the UCL, by
25 failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods.

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

27 25. 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,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS
17 as a whole in that DEFENDANT failed to pay all wages due to members
18 of the CALIFORNIA CLASS as required by law;
- 19 1) With respect to the First Cause of Action, the final relief on behalf
20 of the CALIFORNIA CLASS sought does not relate exclusively to
21 restitution because through this claim PLAINTIFF seeks
22 declaratory relief holding that the DEFENDANT's policy and
23 practices constitute unfair competition, along with declaratory
24 relief, injunctive relief, and incidental equitable relief as may be
25 necessary to prevent and remedy the conduct declared to constitute
26 unfair competition;
- 27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

- 5 1) The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate
7 actions in that the substantial expense of individual actions will be
8 avoided to recover the relatively small amount of economic losses
9 sustained by the individual CALIFORNIA CLASS Members when
10 compared to the substantial expense and burden of individual
11 prosecution of this litigation;
- 12 2) Class certification will obviate the need for unduly duplicative
13 litigation that would create the risk of:
 - 14 A. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS, which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or,
 - 18 B. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties
21 to the adjudication or substantially impair or impede their
22 ability to protect their interests;
- 23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28 assert their claims through a representative; and,

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

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

8 (a) The questions of law and fact common to the CALIFORNIA CLASS
9 predominate over any question affecting only individual CALIFORNIA
10 CLASS Members because the DEFENDANT's employment practices are
11 applied with respect to the CALIFORNIA CLASS;

12 (b) A Class Action is superior to any other available method for the fair and
13 efficient adjudication of the claims of the members of the CALIFORNIA
14 CLASS because in the context of employment litigation a substantial
15 number of individual CALIFORNIA CLASS Members will avoid
16 asserting their rights individually out of fear of retaliation or adverse
17 impact on their employment;

18 (c) The members of the CALIFORNIA CLASS are so numerous that it is
19 impractical to bring all members of the CALIFORNIA CLASS before the
20 Court;

21 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
22 able to obtain effective and economic legal redress unless the action is
23 maintained as a Class Action;

24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the acts of unfair competition, statutory violations and
26 other improprieties, and in obtaining adequate compensation for the
27 damages and injuries which DEFENDANT's actions have inflicted upon
28 the CALIFORNIA CLASS;

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

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

18
19 **THE CALIFORNIA LABOR SUB-CLASS**

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

28 29. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare

1 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
2 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
3 to correctly calculate compensation for the time worked by PLAINTIFF and the other members
4 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
5 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
6 to perform this work and permitted or suffered to permit this work. DEFENDANT has 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 30. DEFENDANT maintains records from which the Court can ascertain and identify
13 by name and job title, each of DEFENDANT’s employees who have been intentionally
14 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged.
15 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
16 similarly situated employees when they have been identified.

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

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

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

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

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks; and,
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR

1 SUB-CLASS who have terminated their employment.

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

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

Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will 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 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS

Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. 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,
 - B. 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;
- 3) 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,

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

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

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

1 DEFENDANT are sufficient to adequately compensate the members of
2 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable
4 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
5 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
6 CLASS as a whole;

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
10 CLASS Members who worked for DEFENDANT in California at any
11 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring
13 a efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA LABOR SUB-CLASS.

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

19 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

24 38. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
25 Code § 17021.

26 39. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
28 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair

1 competition as follows:

2 Any person who engages, has engaged, or proposes to engage in unfair
3 competition may be enjoined in any court of competent jurisdiction. The court
4 may make such orders or judgments, including the appointment of a receiver, as
5 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.

6 Cal. Bus. & Prof. Code § 17203.

7 40. By the conduct alleged herein, DEFENDANT has engaged and continues to
8 engage in a business practice which violates California law, including but not limited to, the
9 applicable Industrial Wage Order(s), the California Code of Regulations and the California
10 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198, for
11 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
12 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
13 unfair competition, including restitution of wages wrongfully withheld.

14 41. By the conduct alleged herein, DEFENDANT's practices were unlawful and
15 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
16 unscrupulous or substantially injurious to employees, and were without valid justification or
17 utility for which this Court should issue equitable and injunctive relief pursuant to Section
18 17203 of the California Business & Professions Code, including restitution of wages wrongfully
19 withheld.

20 42. By the conduct alleged herein, DEFENDANT's practices were deceptive and
21 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
22 meal and rest periods, the required amount of compensation for missed meal and rest periods
23 and overtime and minimum wages owed, and failed to timely pay wages, due to a business
24 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
25 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
26 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
27 § 17203, including restitution of wages wrongfully withheld.

28 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,

1 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
2 other members of the CALIFORNIA CLASS to be underpaid during their employment with
3 DEFENDANT.

4 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
6 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
7 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

8 45. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
9 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
10 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
11 for each workday in which a second off-duty meal period was not timely provided for each ten
12 (10) hours of work.

13 46. PLAINTIFF further demands on behalf of herself and each member of the
14 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
15 duty paid rest period was not timely provided as required by law.

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

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

27 49. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
28 and do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
3 unfair business practices, including earned but unpaid wages for all time worked.

4 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
5 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
6 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
7 engaging in any unlawful and unfair business practices in the future.

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

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

20 **and Against All Defendants)**

21 52. 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 53. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
27 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-
28 CLASS Members.

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

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

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

8 57. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
10 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 58. DEFENDANT's unlawful wage and hour practices manifested, without
14 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
15 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

23 60. 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 the correct minimum wage compensation for their time worked for DEFENDANT.

26 61. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
27 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
28 Members to work without paying them for all the time they were under DEFENDANT's control.

1 As such, during the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
3 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code §§ 510, *et seq.*]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

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

16 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
17 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
18 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
19 these employees for all overtime worked, including, work performed in excess of eight (8)
20 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
21 workweek.

22 68. 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 69. Cal. Lab. Code § 510 further provides that employees in California shall not be
25 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
26 unless they receive additional compensation beyond their regular wages in amounts specified
27 by law.

28 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including minimum wage and overtime compensation and interest thereon, together with the
2 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
3 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

4 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
7 including overtime work.

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

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

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

25 75. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

5 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
7 worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

27 80. 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

1 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
2 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
3 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
4 disregard for their legal rights, or the consequences to them, and with the despicable intent of
5 depriving them of their property and legal rights, and otherwise causing them injury in order
6 to increase company profits at the expense of these employees.

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

18
19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 90. 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 91. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

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

92. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. 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

1 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
2 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
4 § 226.

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

17
18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Pay Wages When Due**

20 **[Cal. Lab. Code §§ 201, 202, 203]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

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

26 95. Cal. Lab. Code § 200 provides that:

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of

1 time, task, piece, Commission basis, or other method of calculation.

2 (b) "Labor" includes labor, work, or service whether rendered or performed
3 under contract, subcontract, partnership, station plan, or other agreement if the
4 labor to be paid for is performed personally by the person demanding
5 payment.

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

9 97. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

22 99. 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
25 employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or
27 until an action therefor is commenced; but the wages shall not continue for
28 more than 30 days.

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

101. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
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 PERIOD, and demands an accounting and payment of all wages due,

1 plus interest and statutory costs as allowed by law.

2 **EIGHTH CAUSE OF ACTION**

3 **For Violation of the Private Attorneys General Act**

4 **[Cal. Lab. Code §§ 2698, *et seq.*]**

5 **(By PLAINTIFF and Against All Defendants)**

6 102. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
7 1-101, supra, as though fully set forth at this point.

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

18 104. PLAINTIFF, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private
20 Attorney General Act, brings this Representative Action on behalf of the State of California
21 with respect to herself and all individuals who worked for DEFENDANT in California and
22 were classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the
23 time period of January 28, 2019 until a date as determined by the Court (the "PAGA
24 PERIOD").

25 105. On January 28, 2020, PLAINTIFF gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference

1 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
2 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 106. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
8 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
9 wages, (d) failed to pay minimum wages, and (e) failed to provide wages when due, all in
10 violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
11 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, and the
12 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
13 such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
14 Labor Code Private Attorney General Act of 2004 as the representative of the State of
15 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES.

17 107. All of the conduct and violations alleged herein occurred during the
18 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
19 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
20 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
21 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

22 **PRAYER FOR RELIEF**

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

25 1. On behalf of the CALIFORNIA CLASS:

26 _____
27 ¹PLAINTIFF specifically excludes and/or does not allege any claims under California
28 Labor Code §558(a)(3).

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

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

- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
13 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
14 pursuant to Cal. Code of Civ. Proc. § 382;
- 15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for minimum and overtime compensation due PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
18 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
19 statutory rate;
- 20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
21 in which a violation occurs and one hundred dollars (\$100) per each member of
22 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
23 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
24 an award of costs for violation of Cal. Lab. Code § 226;
- 25 D) The wages of all terminated employees from the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
27 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 28 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

- 1 the applicable IWC Wage Order; and,
- 2 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 3 1197.
- 4 3. On behalf of the State of California and with respect to all AGGRIEVED
- 5 EMPLOYEES:
- 6 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 7 General Act of 2004.
- 8 4. On all claims:
- 9 A) An award of interest, including prejudgment interest at the legal rate;
- 10 B) Such other and further relief as the Court deems just and equitable; and,
- 11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 12 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.
- 13
- 14

15 Dated: May 4, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

16

17

18 By: 

19 Norman B. Blumenthal
20 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: May 4, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

January 28, 2020

CA2035

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

ICES Education, LLC
Certified Mail # 70192280000189178373
Mary Christina Yanez
6259 E. Metz Street
Long Beach, CA 90808

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant ICES Education, LLC in California and classified as non-exempt employees during the time period of January 28, 2019 until a date as determined by the Court. Our offices represent Plaintiff Vikiea McKamie (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant ICES Education, LLC (“Defendant”). Plaintiff was employed by Defendant in California from August of 2018 to June of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, Violation of 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 Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged

violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) 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 Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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3 2255 Calle Clara

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4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 VIKIEA MCKAMIE, an individual, on behalf
of herself and on behalf of all persons similarly
11 situated,

12
13 Plaintiff,

14 vs.

15 ICES EDUCATION, LLC, a California Limited
Liability Company; and DOES 1 through 50,
16 inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Ices Education, LLC (“DEFENDANT”) is a California limited liability
7 company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. Established in 1981, DEFENDANT is one of California's oldest established
10 providers of After School & Out-of-School learning programs.

11 3. PLAINTIFF was employed by DEFENDANT in California as an after school
12 program leader from August of 2018 to June of 2019 and was at all times classified by
13 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
14 required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.

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

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

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

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

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

23 24 THE CONDUCT

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. From time to time, DEFENDANT required PLAINTIFF and
3 CALIFORNIA CLASS Members to work off the clock without paying them for all the time
4 they were under DEFENDANT's control performing post-shift duties, specifically by failing
5 to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
6 PLAINTIFF and CALIFORNIA CLASS Members to complete. PLAINTIFF and
7 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
8 order to perform additional work for DEFENDANT, including but not limited to, cleaning and
9 vacuuming the classrooms, as required to meet DEFENDANT's job requirements. As a result,
10 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working
11 without their time being accurately recorded and without compensation at the applicable
12 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
13 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
14 DEFENDANT's business records. DEFENDANT knew or should have known that
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were working
16 off the clock and were under compensated for their time worked.

17 9. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
19 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
20 other CALIFORNIA CLASS Members were required from time to time to perform work as
21 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
22 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
23 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
24 which these employees were required by DEFENDANT to work ten (10) hours of work.
25 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
26 without additional compensation and in accordance with DEFENDANT's strict corporate policy
27 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
28 production levels for each employee at the busy airports they operated at.

1 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
3 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
4 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
5 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
6 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
7 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
8 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
9 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
10 Order requires employers to provide employees with off-duty rest periods, which the California
11 Supreme Court defined as time during which an employee is relieved from all work related
12 duties and free from employer control. In so doing, the Court held that the requirement under
13 California law that employers authorize and permit all employees to take rest period means that
14 employers must relieve employees of all duties and relinquish control over how employees
15 spend their time which includes control over the locations where employees may take their rest
16 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
17 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
18 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and was
19 unlawful based on DEFENDANT's rule which stated PLAINTIFF and other CALIFORNIA
20 CLASS Members could not leave the work premises during their rest period.

21 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
22 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
23 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
24 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
25 all time worked, meaning the time during which an employee was subject to the control of an
26 employer, including all the time the employee was permitted or suffered to permit this work.
27 DEFENDANT required these employees to work off the clock without paying them for all the
28 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have

1 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
2 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited time worked by working without their time being accurately recorded and
4 without compensation at the applicable minimum wage and overtime wage rates. To the extent
5 that the time worked off the clock did not qualify for overtime premium payment,
6 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
7 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

8 12. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA CLASS with complete and accurate wage statements
10 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
11 Code § 226 provides that every employer shall furnish each of his or her employees with an
12 accurate itemized wage statement in writing showing, among other things, gross wages earned
13 and all applicable hourly rates in effect during the pay period and the corresponding amount of
14 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
15 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
16 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
17 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
18 statements which violated Cal. Lab. Code § 226.

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

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

11 15. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
12 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
13 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT
14 did not have a policy or practice which provided timely off-duty meal and rest breaks to
15 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
16 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
17 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
18 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
19 DEFENDANT’s business records. As a result of DEFENDANT not accurately recording all
20 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
21 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
22 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
23 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
24 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
25 the sum or value of \$75,000.

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1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 21. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 22. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
19 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that uniformly and systematically failed to record and pay PLAINTIFF
22 and the other members of the CALIFORNIA CLASS for all time worked,
23 including minimum wages owed and overtime wages owed for work
24 performed by these employees; and,
25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.

28 24. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

1 25. 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,
4 statutory and other legal questions within the class format, prosecution of
5 separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

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

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
17 act on grounds generally applicable to the CALIFORNIA CLASS, making
18 appropriate class-wide relief with respect to the CALIFORNIA CLASS
19 as a whole in that DEFENDANT uniformly failed to pay all wages due to
20 members of the CALIFORNIA CLASS as required by law;

21 1) With respect to the First Cause of Action, the final relief on behalf
22 of the CALIFORNIA CLASS sought does not relate exclusively to
23 restitution because through this claim PLAINTIFF seeks
24 declaratory relief holding that the DEFENDANT's policy and
25 practices constitute unfair competition, along with declaratory
26 relief, injunctive relief, and incidental equitable relief as may be
27 necessary to prevent and remedy the conduct declared to constitute
28 unfair competition;

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

7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:

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

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

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT, which
28 may adversely affect an individual's job with DEFENDANT or

1 with a subsequent employer, the Class Action is the only means to
2 assert their claims through a representative; and,

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

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

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

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

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of
6 the CALIFORNIA CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA CLASS as a whole;

10 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring
13 a efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA CLASS.

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

21
22 **THE CALIFORNIA LABOR SUB-CLASS**

23 28. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
24 Causes of Action on behalf of a California sub-class, defined as all members of the
25 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
26 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
27 to the filing of the complaint and ending on the date as determined by the Court (the
28

1 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
2 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
3 Members is under five million dollars (\$5,000,000.00).

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

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

21 31. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 minimum and overtime compensation due to members of the
27 CALIFORNIA LABOR SUB-CLASS and wages due for missed meal
28 and rest breaks in violation of the California Labor Code and California

1 regulations and the applicable California Wage Order;

2 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS with accurate
4 itemized wage statements;

5 (c) Whether DEFENDANT has engaged in unfair competition by the
6 above-listed conduct;

7 (d) The proper measure of damages and penalties owed to the members of the
8 CALIFORNIA LABOR SUB-CLASS; and,

9 (e) Whether DEFENDANT's conduct was willful.

10 33. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
11 under California law by:

12 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
13 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
14 CLASS all wages due for overtime worked, for which DEFENDANT is
15 liable pursuant to Cal. Lab. Code § 1194;

16 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
17 accurately pay PLAINTIFF and the members of the CALIFORNIA
18 LABOR SUB-CLASS the correct minimum wage pay for which
19 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

20 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
21 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
22 itemized statement in writing showing the corresponding correct amount
23 of wages earned by the employee;

24 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
27 meal breaks and the legally required off-duty rest breaks; and,

28 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that

1 when an employee is discharged or quits from employment, the employer
2 must pay the employee all wages due without abatement, by failing to
3 tender full payment and/or restitution of wages owed or in the manner
4 required by California law to the members of the CALIFORNIA LABOR
5 SUB-CLASS who have terminated their employment.

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

- 8 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
9 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
10 Members is impracticable and the disposition of their claims as a class
11 will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the CALIFORNIA
14 LABOR SUB-CLASS and will apply uniformly to every member of the
15 CALIFORNIA LABOR SUB-CLASS;
- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of
17 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
18 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
19 was a non-exempt employee paid on an hourly basis who was subjected
20 to the DEFENDANT's practice and policy which failed to pay the correct
21 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
22 PLAINTIFF sustained economic injury as a result of DEFENDANT's
23 employment practices. PLAINTIFF and the members of the
24 CALIFORNIA LABOR SUB-CLASS were and are similarly or
25 identically harmed by the same unlawful, deceptive, unfair and pervasive
26 pattern of misconduct engaged in by DEFENDANT; and,
- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has

1 retained counsel who are competent and experienced in Class Action
2 litigation. There are no material conflicts between the claims of the
3 representative PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS that would make class certification inappropriate.
5 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
6 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

13 1) Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS which
15 would establish incompatible standards of conduct for the parties
16 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

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

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

- 26 3) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will
28 avoid asserting their legal rights out of fear of retaliation by

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

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

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

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

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of
6 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
9 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
10 CLASS as a whole;

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members who worked for DEFENDANT in California at any
15 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

16 (i) Class treatment provides manageable judicial treatment calculated to bring
17 a efficient and rapid conclusion to all litigation of all wage and hour
18 related claims arising out of the conduct of DEFENDANT as to the
19 members of the CALIFORNIA LABOR SUB-CLASS.

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

23 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

24 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

28 38. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.

1 Code § 17021.

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

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 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.

10 Cal. Bus. & Prof. Code § 17203.

11 40. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Industrial Wage Order(s), the California Code of Regulations and the California
14 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198, for
15 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
16 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
17 unfair competition, including restitution of wages wrongfully withheld.

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

24 42. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated meal and rest periods, the required amount of compensation for missed meal and rest
27 periods and overtime and minimum wages owed, and failed to timely pay wages, due to a
28 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,

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

4 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
6 other members of the CALIFORNIA CLASS to be underpaid during their employment with
7 DEFENDANT.

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

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

17 46. PLAINTIFF further demands on behalf of himself and each member of the
18 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
19 duty paid rest period was not timely provided as required by law.

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

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

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

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

22 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

24 **and Against All Defendants)**

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

28 53. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
2 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
3 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
4 Members.

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

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

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

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

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

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

28 60. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
2 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

27 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as

1 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
2 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
3 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
4 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
5 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
6 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
7 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
8 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
9 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

10
11 **THIRD CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code §§ 510, *et seq.*]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 66. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
18 of this Complaint.

19 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
21 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
22 these employees for all overtime worked, including, work performed in excess of eight (8)
23 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
24 workweek.

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

27 69. Cal. Lab. Code § 510 further provides that employees in California shall not be
28 employed more than eight (8) hours per workday and more than forty (40) hours per workweek

1 unless they receive additional compensation beyond their regular wages in amounts specified
2 by law.

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

7 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
9 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

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

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

7 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
8 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
9 worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

1 overtime worked.

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

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

21
22 **FOURTH CAUSE OF ACTION**

23 **For Failure to Provide Required Meal Periods**

24 **[Cal. Lab. Code §§ 226.7 & 512]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**

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

1 of this Complaint.

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

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

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

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 90. 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 91. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

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

92. From time to time, 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 gross and net wages earned. 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

1 lists all the requirements under California Labor Code 226 *et seq.* As a result,
2 DEFENDANT from time to time provided PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

16 **SEVENTH CAUSE OF ACTION**

17 **For Failure to Pay Wages When Due**

18 **[Cal. Lab. Code §§ 201, 202, 203]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

24 95. Cal. Lab. Code § 200 provides that:

25 As used in this article:

26 (a) "Wages" includes all amounts for labor performed by employees of every
27 description, whether the amount is fixed or ascertained by the standard of
28 time, task, piece, Commission basis, or other method of calculation.

1 (b) "Labor" includes labor, work, or service whether rendered or performed
2 under contract, subcontract, partnership, station plan, or other agreement if the
3 labor to be paid for is performed personally by the person demanding
4 payment.

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

8 97. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

21 99. Cal. Lab. Code § 203 provides:

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

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

101. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
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 PERIOD, and demands an accounting and payment of all wages due,
plus interest and statutory costs as allowed by law.

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
17 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
18 pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) The wages of all terminated employees from the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
4 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
5 the applicable IWC Wage Order; and,
6 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
7 1197.

8 3. On all claims:

- 9 A) An award of interest, including prejudgment interest at the legal rate;
10 B) Such other and further relief as the Court deems just and equitable; and,
11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.
13
14

15 Dated: January 28, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

18 By: _____
19 Norman B. Blumenthal
20 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: January 28, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff