

November 30, 2023

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

KAMPS PROPANE, INC.

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Via Electronic Mail

Case: Stevens v. Kamps Propane, Inc.
Case No.: 37-2021-00016367-CU-OE-CTL
LWDA Case No.: LWDA-CM-814426-20

Re: **Amended Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 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 Kamps Propane, Inc. in California and classified as non-exempt employees during the time period of December 4, 2019 until a date as determined by the Court. Our offices represent Plaintiff David Stevens (“Plaintiff Stevens”), Plaintiff Michael Adams (“Plaintiff Adams”) (hereinafter collectively “Plaintiffs”), and other Aggrieved Employees in a lawsuit against Kamps Propane, Inc. (“Defendant”).

The original claim in this case was submitted to the LWDA on December 4, 2020 by Plaintiff Stevens against Defendant. Plaintiff Adams recently retained counsel to prosecute his claims. Plaintiff Adams learned that Defendant, among other things, failed to provide Plaintiffs, and all those similarly situated, with all legally mandated off-duty meal and rest periods, payment of minimum and overtime wages due for all time worked and failed to separately compensate for all non-productive time, including rest periods. The claim is therefore amended to add Plaintiff Adams. Plaintiff Adams’s claims shall relate back to the date of Plaintiff Stevens’s December 4, 2020 PAGA Notice. *See Huteson v. Superior Court* (2022) 74 Cal.App.5th 932.

Plaintiff Stevens was employed by Defendant in California as a non-exempt employee from 2004 to October of 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Plaintiff Adams was employed by Defendant in California as a non-exempt employee from October of 2021 to March of 2023, working as a truck driver, and 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 Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but "furnished less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Defendant violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the "Retroactive" item of pay, which was a wage payment. Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore

incorporate 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 Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, et seq. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs 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.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID STEVENS and MICHAEL ADAMS,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

v.

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

Defendants.

Case No: 37-2021-00016367-CU-OE-CTL

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *et seq.*;
- 2) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
- 3) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

- 1 8) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203; and
4 9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

5
6 Plaintiffs DAVID STEVENS and MICHAEL ADAMS (“PLAINTIFFS”), individuals, on
7 behalf of themselves and all other similarly situated current and former employees, allege on
8 information and belief, except for their own acts and knowledge which are based on personal
9 knowledge, the following:

10 **THE PARTIES**

11 1. Defendant Kamps Propane, Inc. (“DEFENDANT”) is a California Corporation that at all
12 relevant times mentioned herein conducted and continues to conduct substantial and regular
13 business throughout California.

14 2. DEFENDANT was founded in 1969. The company’s line of business includes the retail sale
15 of bottled or bulk liquefied petroleum gas.

16 3. PLAINTIFF DAVID STEVENS was employed by DEFENDANT in California as a non-
17 exempt employee entitled to overtime pay and meal and rest periods from 2004 to October of 2020.
18 PLAINTIFF DAVID STEVENS was at all times relevant mentioned herein classified by
19 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and received
20 additional compensation from DEFENDANT in the form of non-discretionary incentive wages.

21 4. PLAINTIFF MICHAEL ADAMS was employed by DEFENDANT in California as a non-
22 exempt employee, working as a truck driver, subject to California laws, from October of 2021 to
23 March of 2023. PLAINTIFF MICHAEL ADAMS was at all times relevant mentioned herein
24 classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis
25 and received additional compensation from DEFENDANT in the form of non-discretionary
26 incentive wages..

27 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined
28 as all individuals who are or previously were employed by DEFENDANT in California and

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

6 6. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA CLASS
7 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
8 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
9 lawfully compensate these employees for all their overtime worked. DEFENDANT’s policy and
10 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
11 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members of
12 the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS
13 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
15 injured by DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and
16 equitable relief.

17 7. The true names and capacities, whether individual, corporate, subsidiary, partnership,
18 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
19 PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious names pursuant to Cal.
20 Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true
21 names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are
22 informed and believe, and based upon that information and belief alleges, that the DEFENDANTS
23 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner
24 for one or more of the events and happenings that proximately caused the injuries and damages
25 hereinafter alleged.

26 8. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
27 behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the
28 agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct

1 alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
2 Consequently, the acts of each DEFENDANT are legally attributable to the other DEFENDANTS
3 and all DEFENDANTS are jointly and severally liable to PLAINTIFFS and the other members of
4 the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
5 Defendants' agents, servants and/or employees.

6 **THE CONDUCT**

7 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail to
8 accurately calculate and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS
9 for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
10 accurately calculate minimum and overtime wages for time worked by PLAINTIFFS and other
11 members of the CALIFORNIA CLASS in order to avoid paying these employees the correct
12 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
13 forfeited wages due them for working without compensation at the correct minimum wage and
14 overtime rates. DEFENDANT's policy and practice to not pay the members of the CALIFORNIA
15 CLASS the correct compensation for all time worked in accordance with applicable law is
16 evidenced by DEFENDANT's business records. This policy and practice of DEFENDANT was
17 intended to purposefully avoid the payment of the correct compensation as required by California
18 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors
19 who complied with the law. Further, PLAINTIFFS and other members of the CALIFORNIA
20 CLASS from time to time were not paid wages for all time worked, including overtime wages, such
21 that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
22 practice of unevenly rounding time worked by its employees.

23 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and
24 pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these
25 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked,
27 meaning the time during which an employee was subject to the control of an employer, including
28 all the time the employee was permitted or suffered to permit this work. DEFENDANT required

1 these employees to work off the clock without paying them for all the time they were under
2 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work while
3 clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS
4 were from time to time interrupted by work assignments. Indeed there were days where
5 PLAINTIFFS did not even receive a partial lunch. As a result, PLAINTIFFS and other
6 CALIFORNIA CLASS by working without their time being accurately recorded and without
7 compensation at the applicable minimum wage and overtime rates. To the extent that the time
8 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
9 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,
10 and 1197.1.

11 11. State and federal law provides that employees must be paid overtime at one-and- one-half
12 times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were
13 compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's
14 performance.

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

1 failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFFS and other non-
2 exempt employees regularly earn non-discretionary remuneration, including but not limited to,
3 incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
4 DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at
5 their base rates of pay.

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

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

25 15. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA
26 CLASS Members were from time to time also required to work in excess of four (4) hours without
27 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
28 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a

1 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
2 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
3 shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA
4 CLASS wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
6 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
7 Order requires employers to provide employees with off-duty rest periods, which the California
8 Supreme Court defined as time during which an employee is relieved from all work related duties
9 and free from employer control. In so doing, the Court held that the requirement under California
10 law that employers authorize and permit all employees to take rest period means that employers
11 must relieve employees of all duties and relinquish control over how employees spend their time
12 which includes control over the locations where employees may take their rest period. Employers
13 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
14 minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
15 CLASS Members from unconstrained walks and was unlawful based on Defendant's rule which
16 stated PLAINTIFFS and other CALIFORNIA CLASS Members could not leave the work premises
17 during their rest period.

18 16. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
19 with an accurate itemized wage statement in writing showing, among other things, gross wages
20 earned and all applicable hourly rates in effect during the pay period and the corresponding amount
21 of time worked at each hourly rate. DEFENDANT from time to time failed to provide to
22 PLAINTIFFS and the CALIFORNIA CLASS wage statements that identify the correct gross and
23 net wages earned, the applicable number of hours worked and rates of pay. Specifically,
24 DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of
25 hours worked, including for the "Retroactive," item of pay, which is a wage payment. Aside, from
26 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS and
27 other CALIFORNIA CLASS members an itemized wage statement that lists all the requirements
28 under California Labor Code 226 et seq.

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

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

20 19. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA CLASS
21 Members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
22 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
23 company-wide policy and procedure which failed to accurately calculate and record the correct
24 overtime rate for the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
25 Members. The proper calculation of these employees' overtime hour rates is the DEFENDANT's
26 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
27 DEFENDANT failed to required overtime compensation for work performed by the members of
28

1 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
2 thereunder as herein alleged.

3 20. Specifically as to PLAINTIFFS' pay, DEFENDANT provided compensation to him in the
4 form of two components. One component of PLAINTIFFS' compensation was a base hourly wage.

5 The second component of PLAINTIFFS' compensation were non-discretionary incentive
6 wages. DEFENDANT paid the incentive wages, so long as PLAINTIFFS met certain predefined
7 performance requirements. PLAINTIFFS met DEFENDANT's predefined eligibility performance
8 requirements in various pay periods throughout his employment with DEFENDANT and
9 DEFENDANT paid PLAINTIFFS the non-discretionary incentive wages. During these pay periods
10 in which PLAINTIFFS were paid the non-discretionary incentive wages by DEFENDANT,
11 PLAINTIFFS also worked overtime for DEFENDANT, but DEFENDANT never included the
12 incentive compensation in PLAINTIFFS' regular rate of pay for the purposes of calculating what
13 should have been PLAINTIFFS' accurate overtime rate and thereby underpaid PLAINTIFFS for
14 overtime worked throughout their employment with DEFENDANT. The incentive compensation
15 paid by DEFENDANT constituted wages within the meaning of the California Labor Code and
16 thereby should have been part of PLAINTIFFS' "regular rate of pay." PLAINTIFFS were also from
17 time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his
18 meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANT for more
19 than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
20 failed to provide PLAINTIFFS with a second off-duty meal period from time to time in which they
21 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS therefore
22 forfeited meal and rest breaks without additional compensation and in accordance with
23 DEFENDANT's corporate policy and practice. DEFENDANT also provided PLAINTIFFS with a
24 pay stub that failed to accurately display PLAINTIFFS' correct net and gross wages earned and all
25 hourly rates for certain pay periods in violation of Cal. Lab. DEFENDANT has not fully paid
26 PLAINTIFFS the wage compensation still owed to them or any penalty wages owed to him under
27 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
28 the sum or value of \$75,000.

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1 discretion and independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither
2 the PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
3 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

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

26 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
27 Members is impracticable.

28 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 1 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et*
2 *seq.*, by unlawfully, unfairly and/or deceptively having in place company policies,
3 practices and procedures that failed to pay all minimum and overtime wages due the
4 CALIFORNIA CLASS for all time worked, and failed to accurately record the
5 applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 6 (b) Committing an act of unfair competition in violation of the California Unfair
7 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly,
8 and/or deceptively having in place a company policy, practice and procedure that failed
9 to correctly calculate overtime compensation due to PLAINTIFF and the members of
10 the CALIFORNIA CLASS;
- 11 (c) Committing an act of unfair competition in violation of the Unfair Competition Laws,
12 Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating the Fair Labor Standards Act
13 (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, by failing to pay the correct federal overtime
14 wages to the PLAINTIFFS and the members of the CALIFORNIA CLASS as legally
15 required by the FLSA, and retaining the unpaid federal overtime to the benefit of
16 DEFENDANT.;
- 17 (d) Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
19 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS
20 members; and,
- 21 (e) Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code
23 § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members
24 with necessary expenses incurred in the discharge of their job duties.
- 25 (f) This Class Action meets the statutory prerequisites for the maintenance of a Class Action as
26 set forth in Cal. Code of Civ. Proc. § 382, in that:
- 27
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- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder
2 of all such persons is impracticable and the disposition of their claims as a class will
3 benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised
5 in this Complaint are common to the CALIFORNIA CLASS will apply to every
6 member of the CALIFORNIA CLASS;
- 7 (c) The claims of the representative PLAINTIFFS are typical of the claims of each member
8 of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the
9 CALIFORNIA CLASS, were subjected to the employment practices of DEFENDANT
10 and was a non-exempt employee 28 paid on an hourly basis and paid additional non-
11 discretionary incentive wages who was subjected to the DEFENDANT's practice and
12 policy which fails to pay the correct rate of overtime wages due to the
13 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and
14 thereby underpays overtime compensation to the CALIFORNIA CLASS.
- 15 PLAINTIFFS sustained economic injury as a result of DEFENDANT's
16 employment practices. PLAINTIFFS and the members of the CALIFORNIA CLASS
17 were and are similarly or identically harmed by the same unlawful, deceptive
18 and unfair misconduct engaged in by DEFENDANT; and,
- 19 (d) The representative PLAINTIFFS will fairly and adequately represent and protect the
20 interest of the CALIFORNIA CLASS, and have retained counsel who are competent
21 and experienced in Class Action litigation. There are no material conflicts between the
22 claims of the representative PLAINTIFFS and the members of the CALIFORNIA
23 CLASS that would make class certification inappropriate. Counsel for the
24 CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS
25 Members.

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

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

1 expense of individual actions will be avoided to recover the relatively small amount of
2 economic losses sustained by the individual CALIFORNIA CLASS Members when
3 compared to the substantial expense and burden of individual prosecution of this
4 litigation;

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

7 A. Inconsistent or varying adjudications with respect to individual members of the
8 CALIFORNIA CLASS, which would establish incompatible standards of
9 conduct for the

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

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

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

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

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

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

25 33. DEFENDANT maintains records from which the Court can ascertain and identify by job title
26 each of DEFENDANT's employees who as have been intentionally subjected to DEFENDANT's
27 conduct as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
28 any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB- CLASS

34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

35. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime compensation for the overtime worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members overtime wages at the correct amount to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

36. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been intentionally subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

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

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

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- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
2 compensation to members of the CALIFORNIA LABOR SUB- CLASS in violation of
3 the California Labor Code and California regulations and the applicable California
4 Wage Order;
- 5 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
6 overtime compensation for overtime worked under the overtime pay requirements of
7 California law;
- 8 (c) Whether DEFENDANT failed to accurately record the applicable overtime rates
9 for all overtime worked PLAINTIFFS and the other members of the CALIFORNIA
10 LABOR SUB-CLASS;
- 11 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty
13 (30) minute meal breaks and rest periods;
- 14 (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- 16 (f) Whether DEFENDANT has engaged in unfair competition by the above-listed
17 conduct;
- 18 (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA
19 LABOR SUB-CLASS; and,
- 20 (h) Whether DEFENDANT's conduct was willful.

21 39. DEFENDANT failed to accurately calculate overtime compensation for the
22 CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the
23 applicable overtime rates for the overtime worked by these employees. All of the
24 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFFS, were non-exempt
25 employees who were paid on an hourly basis by DEFENDANT according to company
26 procedures as alleged herein above. This business practice was applied to each and every member
27 of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
28 adjudicated on a class-wide basis.

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

3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFFS
4 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
5 pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

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

10 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
11 and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
13 and,

14 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the
15 CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing
16 showing all accurate and applicable overtime rates in effect during the pay period
17 and the corresponding amount of time worked at each overtime rate by the employee;

18 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
19 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
20 in the discharge of their job duties; and,

21 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee
22 is discharged or quits from employment, the employer must pay the employee all wages
23 due without abatement, by failing to tender full payment and/or restitution of wages
24 owed or in the manner required by California law to the members of the CALIFORNIA
25 LABOR SUB-CLASS who have terminated their employment.

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

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive, statutory and
27 other legal questions within the class format, prosecution of separate actions by individual
28 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 failed to pay all wages due. Including the correct overtime rate, for all overtime 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:

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

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- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it
2 is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the
3 Court;
- 4 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will
5 not be able to obtain effective and economic legal redress unless the action is maintained
6 as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and equitable relief
8 for the acts of unfair competition, statutory violations and other improprieties, and in
9 obtaining adequate compensation for the damages and injuries which DEFENDANT's
10 actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- 11 (f) There is a community of interest in ensuring that the combined assets of DEFENDANT
12 are sufficient to adequately compensate the members of the CALIFORNIA LABOR
13 SUB-CLASS for the injuries sustained;
- 14 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
15 CALIFORNIA LABOR SUB-CLASS, thereby making final class- wide relief appropriate
16 with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 17 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable
18 from the business records of DEFENDANT. The CALIFORNIA LABOR
19 SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-
20 exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and
22 rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-
24 CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate
6 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

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

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

16 Cal. Bus. & Prof. Code § 17203.

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18 47. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
19 business practice which violates California law, including but not limited to, the applicable Wage
20 Order(s), the California Code of Regulations and the California Labor Code including Sections
21 204(a), 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair Labor Standards Act and
22 federal regulations promulgated thereunder, for which this Court should issue declaratory and other
23 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
24 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
25 withheld.

26 48. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that
27 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
28 substantially injurious to employees, and were without valid justification or utility for which this

1 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in
4 that DEFENDANT's policy and practice failed to pay PLAINTIFFS, and other members of the
5 CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime worked as a result of
6 failing to include incentive compensation into their regular rates for purposes of computing overtime
7 pay, failed to pay minimum and overtime wages for all time worked, failed to accurately to record
8 the applicable rate of all overtime worked, failed to pay reporting time wages owed, failed to
9 reimburse necessary business expenses incurred, and failed to provide the required amount of
10 overtime compensation due to a miscalculation of the overtime rate that cannot be justified, pursuant
11 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
12 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
13 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
14 withheld.

15 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
16 deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other
17 members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

19 51. By the conduct alleged herein, DEFENDANT's practices were also unfair and deceptive in
20 that DEFENDANT's policies, practices and procedures failed to provide mandatory meal and/or rest
21 breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

22 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
24 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
25 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of
26 work.

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1 53. PLAINTIFFS further demand on behalf of themselves and on behalf of each CALIFORNIA
2 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
3 timely provided as required by law.

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

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

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

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

24 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
27 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful
2 and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

5 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

6 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
7 **Defendants)**

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

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

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

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

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

26 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
27 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
28 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,

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

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

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

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

22 68. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
23 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
24 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and
25 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
26 bargaining agreement that would preclude the causes of action contained herein this Complaint.
27 Rather, the PLAINTIFFS brings this Action on behalf of themselves and the CALIFORNIA LABOR
28

1 SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided
2 by the State of California.

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

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

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

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

24 73. In performing the acts and practices herein alleged in violation of California labor laws, and
25 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked
26 and provide them with the requisite overtime compensation, DEFENDANT acted and continues to
27 act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights,

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

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

15 **THIRD CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

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

18 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

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

23 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
26 and pay minimum and reporting time wages to PLAINTIFFS and CALIFORNIA CLASS
27 Members.

28 ///

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

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

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

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

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

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

23 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFFS
24 and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the correct
25 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

23 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore
24 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
26 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is
27 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
28 their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and

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

6 **FOURTH CAUSE OF ACTION**

7 **For Failure To Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

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

14 90. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT failed to
15 provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA
16 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The
17 nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
18 MEMBERS did not prevent these employees from being relieved of all of their duties for the legally
19 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and
20 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of
21 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
22 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
23 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
24 Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
25 Members with a second off-duty meal period from time to time in which these employees were required
26 by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFFS and other members of
27 the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
28 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

9 **FIFTH CAUSE OF ACTION**

10 **For Failure To Provide Required Rest Periods**

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

12 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **For Failure To Provide Accurate Itemized Statements**

8 **[Cal. Lab. Code §§ 226]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

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

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

- 15 (1) gross wages earned,
- 16 (2) total hours worked by the employee, except for any employee whose compensation is
17 solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
19 Commission,
- 20 (3) the number of piece rate units earned and any applicable piece rate if the employee is
21 paid on a piece-rate basis,
- 22 (4) all deductions, provided that all deductions made on written orders of the employee may
23 be aggregated and shown as one item,
- 24 (5) net wages earned,
- 25 (6) the inclusive dates of the period for which the employee is paid,
- 26 (7) the name of the employee and his or her social security number, except that by January
27 1, 2008, only the last four digits of his or her social security number or an employee
28

1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

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

1 more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
2 CALIFORNIA LABOR SUB-CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **For Failure To Reimburse Employees for Required Expenses**

5 **[Cal. Lab. Code §§ 2802]**

6 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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

9 102. Cal. Lab. Code § 2802 provides, in relevant part, that: An employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct consequence
11 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
12 even though unlawful, unless the employee, at the time of obeying the directions, believed them
13 to be unlawful.

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

1 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
2 these expenses as an employer is required to do under the laws and regulations of California.

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

7 **EIGHTH CAUSE OF ACTION**

8 **For Failure To Pay Wages When Due**

9 **[Cal. Lab. Code §§ 201. 202. 203]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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

13 106. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

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

24 108. Cal. Lab. Code § 202 provides, in relevant part, that:

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

1 shall constitute the date of payment for purposes of the requirement to provide payment within
2 72 hours of the notice of quitting.

3 109. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS
4 Members' employment contract.

5 110. Cal. Lab. Code § 203 provides:

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

11 111. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members
12 terminated and DEFENDANT has not tendered payment of overtime wages, to these employees who
13 actually worked overtime, as required by law.

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

19 **NINTH CAUSE OF ACTION**

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

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

22 **(By PLAINTIFFS and Against All DEFENDANTS)**

23 113. PLAINTIFFS reallege and incorporates by reference, as though fully set forth herein, the
24 prior paragraphs of this Complaint.

25 114. PAGA is a mechanism by which the State of California itself can enforce state labor laws
26 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
27 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
28 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature

1 specified that "it was ... in the public interest to allow aggrieved employees, acting as private
2 attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1.
3 Accordingly, PAGA claims cannot be subject to arbitration.

4 115. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
6 this individual and Representative Action on behalf of the State of California with respect to
7 themselves and all individuals who are or previously were employed by DEFENDANT in
8 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the
9 time period of December 4, 2019 until a date as determined by the Court (the "PAGA PERIOD").

10 116. On December 4, 2020, PLAINTIFF DAVID STEVENS gave written notice by electronic
11 mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to
12 the employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. Attached as Exhibit #1. The statutory waiting period for PLAINTIFF DAVID
14 STEVENS to add these allegations to the Complaint has expired. As a result, pursuant to Section
15 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to
16 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES
17 as herein defined.

18 117. The policies, acts and practices heretofore described were and are an unlawful business
19 act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other AGGRIEVED
20 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
21 required meal and rest periods, (c) failed to pay overtime wages, (d) failed to pay minimum wages,
22 (e) failed to provide wages when due, and (f) failed to reimburse employees for required expenses,
23 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
24 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
25 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable
26 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹

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

118. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves and as the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for overtime compensation due PLAINTIFFS and the other members of the
3 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
4 SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 5 C) Meal and rest period compensation pursuant to California Labor Code Section 226.7
6 and the applicable IWC Wage Order;
- 7 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
8 which a violation occurs and one hundred dollars (\$100) per each member of the
9 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period,
10 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of
11 costs for violation of Cal. Lab. Code § 226;
- 12 E) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
13 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs
14 of suit;
- 15 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 16 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
17 CLASS as a penalty from the due date thereof at the same rate until paid or until an
18 action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- 19 H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period
20 in which a violation occurs and two hundred dollars (\$200) per each member of
21 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
22 period, for violation of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code
23 § 210.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES, including Plaintiffs in their individual and representative capacity:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.

28 ///

1 4. On all claims:

2 A) An award of interest, including prejudgment interest at the legal rate;

3 B) Such other and further relief as the Court deems just and equitable; and,

4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
5 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

6
7 DATED: November __, 2023

8
9 **JCL LAW FIRM, APC**

10 By: _____

11 Jean-Claude Lapuyade, Esq.
12 Attorney for PLAINTIFF

13
14
15 **DEMAND FOR A JURY TRIAL**

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

17 DATED: November __, 2023

18
19 **JCL LAW FIRM, APC**

20 By: _____

21 Jean-Claude Lapuyade, Esq.
22 Attorney for PLAINTIFF

EXHIBIT 1

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**WRITERS EXT:
1004**

**December 4, 2020
CA2013**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Kamps Propane, Inc.
Certified Mail #70200640000074883542
Business Filings Incorporated
818 West Seventh Street, Suite 930
Los Angeles, CA 90017**

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), 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 Kamps Propane, Inc. in California and classified as non-exempt employees during the time period of December 4, 2019 until a date as determined by the Court. Our offices represent Plaintiff David Stevens and other Aggrieved Employees in a lawsuit against Kamps Propane, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from 2004 to October of 2020 and 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, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture,*

LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. 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). Specifically, Defendant violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the “Retroactive” item of pay, which was a wage payment. 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. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), 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 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.