

SUMMONS (CITACION JUDICIAL)

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

FILED

SEP 14 2020

CLERK OF THE SUPERIOR COURT
BY: B. PACKHAM, DEPUTY CLERK

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

SISKIYOU FOREST PRODUCTS, a California Corporation; and DOES
1-50, Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JAMES M. CONLEY, an individual, on behalf of himself and on behalf
of all persons similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Shasta Superior Court - Main Courthouse

1500 Court Street, Room 319
Redding, CA 96001

CASE NUMBER:
(Número del Caso):

195819

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. 3990 Old Town Ave. Suite C204 San Diego, California 92110 Telephone: 615-255-9047

DATE:
(Fecha)

SEP 14 2020

Clerk, by
(Secretario)

B. PACKHAM

, Deputy
(Adjunto)

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

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

BY FAX

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
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San Diego, CA 92110
Telephone: (619)255-9047; Facsimile: (858) 404-9203

FILED

SEP 14 2020

CLERK OF THE SUPERIOR COURT
BY: B. PACKHAM, DEPUTY CLERK

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
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Telephone: (619)599-8292; Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SHASTA**

JAMES M. CONLEY, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SISKIYOU FOREST PRODUCTS, a
California Corporation; and ~~DOES 1-50,~~
Inclusive, Does 1-50, inclusive,

Defendants.

Case No: **1958 19**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant SISKIYOU FOREST PRODUCTS (“Defendant” or
8 “DEFENDANT”) is a California Corporation and at all relevant times mentioned herein
9 conducted and continues to conduct substantial and regular business in California.

10 2. DEFENDANT owns and operates a 35 acre manufacturing plant in Anderson,
11 CA.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from November
14 2017 to February 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANTS in the form of non-discretionary
incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who are or previously were employed by Defendant in California and
19 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
20 period beginning April 6, 2016 and ending on the date as determined by the Court (the
21 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
22 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

23 **THE CONDUCT**

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

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

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

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

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

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

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

20 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
21 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
22 CALIFORNIA CLASS Members for the actual time these employees worked each day,
23 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
24 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and
25 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
26 applicable overtime compensation for overtime worked and to avoid paying these employees for
27 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28

1 time to time, forfeited time worked by working without their time being accurately recorded and
2 without compensation at the applicable overtime rates.

3 14. The mutability of the timekeeping system also allowed DEFENDANT to alter
4 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
5 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
6 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
7 were not at all times provided an off-duty meal break. This practice is a direct result of
8 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
9 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks

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

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

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

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

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

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

JURISDICTION AND VENUE

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

1 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
2 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
3 maintained offices and facilities in this County and/or conducts substantial business in this
4 County, and (ii) committed the wrongful conduct herein alleged in this County against members
5 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

6
7
8 **THE CALIFORNIA CLASS**

9 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
10 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
11 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
12 individuals who are or previously were employed by Defendant in California and classified as
13 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
14 April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS
15 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
16 Members is under five million dollars (\$5,000,000.00).

17 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

20 24. The California Legislature has commanded that "all wages... ..earned by any
21 person in any employment are due and payable twice during each calendar month, on days
22 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
23 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
24 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
25 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
26 however, is statutorily authorized to "establish exemptions from the requirement that an
27 overtime rate of compensation be paid... ..for executive, administrative, and professional
28 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the

1 test of the exemption, [and] customarily and regularly exercises discretion and independent
2 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
3 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
4 qualify for exemption from the above requirements.

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

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

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

1 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
2 as to include all earnings in the overtime compensation calculation as required by California
3 Labor Code §§ 510, *et seq.*

4 28. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
7 California law by:

8 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
9 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
10 company policies, practices and procedures that failed to pay all wages due the
11 CALIFORNIA CLASS for all minimum wages and overtime worked, and failed
12 to accurately record the applicable rates of all overtime worked by the
13 CALIFORNIA CLASS;

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

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

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

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

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

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

- 26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions
28 by individual members of the CALIFORNIA CLASS will create the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA CLASS which would establish incompatible
3 standards of conduct for the parties opposing the CALIFORNIA CLASS;
4 and/or;
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 CLASS which would as a practical matter be dispositive of interests of
7 the other members not party to the adjudication or substantially impair or
8 impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
10 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
11 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
12 DEFENDANTS uniformly failed to pay all wages due, including the correct
13 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
14 as required by law;
- 15 i. With respect to the First Cause of Action, the final relief on behalf of the
16 CALIFORNIA CLASS sought does not relate exclusively to restitution
17 because through this claim PLAINTIFF seek declaratory relief holding
18 that the DEFENDANT's policy and practices constitute unfair
19 competition, along with declaratory relief, injunctive relief, and incidental
20 equitable relief as may be necessary to prevent and remedy the conduct
21 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
24 above, and predominate over any question affecting only individual
25 CALIFORNIA CLASS Members, and a Class Action is superior to other
26 available methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- i. The interests of the members of the CALIFORNIA 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 CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANT; and

3 i. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANT as to the members of the
6 CALIFORNIA CLASS.

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

13 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
14 causes of Action on behalf of a California sub-class, defined as all members of the
15 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
16 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as
17 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
18 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
19 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

20 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
24 compensation for the overtime worked by PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
26 work, required employees to perform this work and permitted or suffered to permit this
27 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
28 CLASS Members minimum and overtime wages at the correct amount to which these

1 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
2 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
3 against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

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

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

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

- 15 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
16 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
17 violation of the California Labor Code and California regulations and the
18 applicable California Wage Order;
- 19 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
20 to overtime compensation for overtime worked under the overtime pay
21 requirements of California law;
- 22 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
23 for all overtime worked PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS;
- 25 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
27 thirty (30) minute meal breaks and rest periods;

- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

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

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the name and address of PLAINTIFF's employer, and all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt

1 employee paid on an hourly basis and paid additional non-discretionary incentive
2 wages who was subjected to the DEFENDANT's practice and policy which
3 failed to pay the correct rate of overtime wages due to the CALIFORNIA
4 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
5 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
8 of misconduct engaged in by DEFENDANT; and

- 9 d. The representative PLAINTIFF will fairly and adequately represent and protect
10 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
11 counsel who are competent and experienced in Class Action litigation. There are
12 no material conflicts between the claims of the representative PLAINTIFF and
13 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
14 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
15 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
16 Members.

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

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

1 interests of the other members not party to the adjudication or
2 substantially impair or impede their ability to protect their interests.

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

10 c. Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
14 Class Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 i. The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA LABOR SUB-CLASS
21 Members when compared to the substantial expense and burden of
22 individual prosecution of this litigation;

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

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

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

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

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

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

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

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
2 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
3 CLASS before the Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
5 not be able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 e. There is a community of interest in obtaining appropriate legal and equitable
8 relief for the acts of unfair competition, statutory violations and other
9 improprieties, and in obtaining adequate compensation for the damages and
10 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
11 LABOR SUB-CLASS;
- 12 f. There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
16 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 18 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
20 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
21 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
22 PERIOD; and
- 23 i. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims
25 arising out of the conduct of DEFENDANT as to the members of the
26 CALIFORNIA LABOR SUB-CLASS.
- 27
28

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

18 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1,
22 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
23 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
24 constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
6 worked, failed to accurately to record the applicable rate of all overtime worked, and failed to
7 provide the required amount of overtime compensation due to a systematic miscalculation of the
8 overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
9 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
10 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
11 § 17203, including restitution of wages wrongfully withheld.

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

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

19 52. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
20 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 53. PLAINTIFF further demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 54. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

15 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
21 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
24 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
25 engage in these unlawful and unfair business practices.

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2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**
4 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

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

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

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

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

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

27 65. DEFENDANT'S uniform pattern of unlawful wage and hour practices
28 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
whole, as a result of implementing a uniform policy and practice that denies accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS in regards to minimum wage pay.

3 66. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
11 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

28 71. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
time worked and provide them with requisite compensation, DEFENDANT acted and continue

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME COMPENSATION** 18 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

24 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
27 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
28 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly

1 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
2 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
3 any workweek.

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

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

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

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

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

28 80. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and the applicable overtime rates and
consequently underpaid the actual time worked by PLAINTIFF and other members of the

1 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
2 payment of all earned wages, and other benefits in violation of the California Labor Code, the
3 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

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

1 86. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
3 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
5 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
6 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
7 applicable overtime rate.

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
3 **(Cal. Lab. Code § 226)**

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

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

9 98. Cal. Labor Code § 226 provides that an employer must furnish employees withan
10 “accurate itemized” statement in writing showing:

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

29 105. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

31 106. Cal. Lab. Code § 203 provides:

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

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

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

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

SIXTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

111. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to
2 themselves and all individuals who are or previously were employed by DEFENDANT and
3 classified as non-exempt employees in California during the time period of April 6, 2019 until
4 the present (the "AGGRIEVED EMPLOYEES").

5 112. On July 9, 2020 PLAINTIFF gave written notice by certified mail to the Labor
6 and Workforce Development Agency (the "Agency") and the employer of the specific
7 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
8 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
9 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
10 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
11 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
12 AGGRIEVED EMPLOYEES as herein defined.

13 113. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
16 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
17 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
18 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
19 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
20 226.3, 226.7, 510 , 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the applicable
21 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
22 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
23 Private Attorney General Act of 2004 as the representative of the State of California for the
24 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

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

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

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: September 14, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: September 14, 2020

ZAKAY LAW GROUP, APLC

By: _____


Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

July 9, 2020

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

SISKIYOU FOREST PRODUCTS
c/o FRED DUCHI
PO BX 811
ANDERSON CA 96007

SISKIYOU FOREST PRODUCTS
6275 HWY 273
ANDERSON CA 96007

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

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

Plaintiff was employed by Defendant in California from November 2017 to February 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Defendant also failed to provide Plaintiff and similarly situated aggrieved employees with complete wage statements that included the address of Defendant. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Respectfully,

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

Shani O. Zakay
Attorney at Law

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
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JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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San Diego, CA 92110
Telephone: (619)599-8292; Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SHASTA**

JAMES M. CONLEY, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SISKIYOU FOREST PRODUCTS, a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant SISKIYOU FOREST PRODUCTS (“Defendant” or
8 “DEFENDANT”) is a California Corporation and at all relevant times mentioned herein
9 conducted and continues to conduct substantial and regular business in California.

10 2. DEFENDANT owns and operates a 35 acre manufacturing plant in Anderson,
11 CA.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from November
14 2017 to February 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
16 received additional compensation from DEFENDANTS in the form of non-discretionary
incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
18 defined as all individuals who are or previously were employed by Defendant in California and
19 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
20 period beginning April 6, 2016 and ending on the date as determined by the Court (the
21 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
22 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

23 **THE CONDUCT**

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

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

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

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

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

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

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

20 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
21 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
22 CALIFORNIA CLASS Members for the actual time these employees worked each day,
23 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
24 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and
25 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
26 applicable overtime compensation for overtime worked and to avoid paying these employees for
27 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28

1 time to time, forfeited time worked by working without their time being accurately recorded and
2 without compensation at the applicable overtime rates.

3 14. The mutability of the timekeeping system also allowed DEFENDANT to alter
4 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
5 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
6 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
7 were not at all times provided an off-duty meal break. This practice is a direct result of
8 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
9 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks

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

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

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

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

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

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

JURISDICTION AND VENUE

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

1 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
2 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
3 maintained offices and facilities in this County and/or conducts substantial business in this
4 County, and (ii) committed the wrongful conduct herein alleged in this County against members
5 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

6
7
8 **THE CALIFORNIA CLASS**

9 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
10 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
11 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
12 individuals who are or previously were employed by Defendant in California and classified as
13 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
14 April 6, 2016 and ending on the date as determined by the Court (the "CALIFORNIA CLASS
15 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
16 Members is under five million dollars (\$5,000,000.00).

17 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

20 24. The California Legislature has commanded that "all wages... ..earned by any
21 person in any employment are due and payable twice during each calendar month, on days
22 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
23 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
24 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
25 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
26 however, is statutorily authorized to "establish exemptions from the requirement that an
27 overtime rate of compensation be paid... ..for executive, administrative, and professional
28 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the

1 test of the exemption, [and] customarily and regularly exercises discretion and independent
2 judgment in performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
3 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
4 qualify for exemption from the above requirements.

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

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

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

overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so as to include all earnings in the overtime compensation calculation as required by California Labor Code §§ 510, *et seq.*

28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all minimum wages and overtime worked, and failed to accurately record the applicable rates of all overtime worked by the CALIFORNIA CLASS;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedure that failed to correctly calculate overtime compensation due to PLAINTIFF and the members of the CALIFORNIA CLASS; and
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

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

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

- 26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions
28 by individual members of the CALIFORNIA CLASS will create the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA CLASS which would establish incompatible
3 standards of conduct for the parties opposing the CALIFORNIA CLASS;
4 and/or;
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 CLASS which would as a practical matter be dispositive of interests of
7 the other members not party to the adjudication or substantially impair or
8 impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
10 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
11 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
12 DEFENDANTS uniformly failed to pay all wages due, including the correct
13 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
14 as required by law;
- 15 i. With respect to the First Cause of Action, the final relief on behalf of the
16 CALIFORNIA CLASS sought does not relate exclusively to restitution
17 because through this claim PLAINTIFF seek declaratory relief holding
18 that the DEFENDANT's policy and practices constitute unfair
19 competition, along with declaratory relief, injunctive relief, and incidental
20 equitable relief as may be necessary to prevent and remedy the conduct
21 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
24 above, and predominate over any question affecting only individual
25 CALIFORNIA CLASS Members, and a Class Action is superior to other
26 available methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
- 28

- i. The interests of the members of the CALIFORNIA 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 CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANT; and

3 i. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANT as to the members of the
6 CALIFORNIA CLASS.

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

13 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
14 causes of Action on behalf of a California sub-class, defined as all members of the
15 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
16 SUB-CLASS") at any time during the period beginning April 6, 2017 and ending on the date as
17 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
18 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
19 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

20 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and
23 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
24 compensation for the overtime worked by PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
26 work, required employees to perform this work and permitted or suffered to permit this
27 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
28 CLASS Members minimum and overtime wages at the correct amount to which these

1 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the
2 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
3 against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

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

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

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

- 15 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
16 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
17 violation of the California Labor Code and California regulations and the
18 applicable California Wage Order;
- 19 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
20 to overtime compensation for overtime worked under the overtime pay
21 requirements of California law;
- 22 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
23 for all overtime worked PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS;
- 25 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
27 thirty (30) minute meal breaks and rest periods;

- e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

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

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the name and address of PLAINTIFF's employer, and all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt

1 employee paid on an hourly basis and paid additional non-discretionary incentive
2 wages who was subjected to the DEFENDANT's practice and policy which
3 failed to pay the correct rate of overtime wages due to the CALIFORNIA
4 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
5 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
8 of misconduct engaged in by DEFENDANT; and

- 9 d. The representative PLAINTIFF will fairly and adequately represent and protect
10 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
11 counsel who are competent and experienced in Class Action litigation. There are
12 no material conflicts between the claims of the representative PLAINTIFF and
13 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
14 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
15 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
16 Members.

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

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

1 interests of the other members not party to the adjudication or
2 substantially impair or impede their ability to protect their interests.

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

10 c. Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
14 Class Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 i. The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA LABOR SUB-CLASS
21 Members when compared to the substantial expense and burden of
22 individual prosecution of this litigation;

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

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

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

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

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

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

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

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

18 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1,
22 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
23 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
24 constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
6 worked, failed to accurately to record the applicable rate of all overtime worked, and failed to
7 provide the required amount of overtime compensation due to a systematic miscalculation of the
8 overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
9 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
10 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
11 § 17203, including restitution of wages wrongfully withheld.

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

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

19 52. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
20 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 53. PLAINTIFF further demands on behalf of herself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 54. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
2 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

15 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
21 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
24 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
25 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

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

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

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

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

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

65. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS in regards to minimum wage pay.

3 66. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
11 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

28 71. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
time worked and provide them with requisite compensation, DEFENDANT acted and continue

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME COMPENSATION** 19 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

25 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
27 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
28 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly

1 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
2 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
3 any workweek.

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

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

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

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

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

28 80. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and the applicable overtime rates and
consequently underpaid the actual time worked by PLAINTIFF and other members of the

1 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
2 payment of all earned wages, and other benefits in violation of the California Labor Code, the
3 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

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

1 86. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
3 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
5 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
6 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
7 applicable overtime rate.

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
3 **(Cal. Lab. Code § 226)**

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

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

9 98. Cal. Labor Code § 226 provides that an employer must furnish employees withan
10 “accurate itemized” statement in writing showing:

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

29 105. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

31 106. Cal. Lab. Code § 203 provides:

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

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

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

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

SIXTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

111. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to
2 themselves and all individuals who are or previously were employed by DEFENDANT and
3 classified as non-exempt employees in California during the time period of April 6, 2019 until
4 the present (the "AGGRIEVED EMPLOYEES").

5 112. On _____, PLAINTIFF gave written notice by certified mail to the
6 Labor and Workforce Development Agency (the "Agency") and the employer of the
7 specific provisions of this code alleged to have been violated as required by Labor Code §
8 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
9 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
10 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
11 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
12 to all AGGRIEVED EMPLOYEES as herein defined.

13 113. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
16 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
17 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
18 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
19 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
20 226.3, 226.7, 510 , 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the applicable
21 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
22 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
23 Private Attorney General Act of 2004 as the representative of the State of California for the
24 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

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

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

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

DATED: July ____ 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: July ____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1