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20
21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **IN AND FOR THE COUNTY OF SAN DIEGO**
23

24 TAYLOR SANIT, an individual, on behalf
25 of himself and on behalf of all persons
26 similarly situated,

27 Plaintiff,

28 v.

ANO DOUKA, INC.; and DOES 1-50,
Inclusive,

Defendant(s).

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/02/2021 at 06:09:55 PM

Clerk of the Superior Court
By Keira McCray, Deputy Clerk

Case No. 37-2021-00046578-CU-OE-CTL

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;

*[additional causes of action continued on
next page]*

- 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;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, et seq.; and

DEMAND FOR JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant ANO DOUKA, INC. (“DEFENDANT” or “DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT operates restaurants in the County of San Diego.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from April 25, 2021 to July 3, 2021. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all the time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT

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

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

18 6. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
20 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
21 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
22 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
23 they are ascertained. PLAINTIFF is informed and believes, and based upon that
24 information and belief alleges, that the Defendants named in this Complaint, including
25 DOES 1 through 50, inclusive, are responsible in some manner for one or more of the
26 events and happenings that proximately caused the injuries and damages hereinafter
27 alleged
28

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended. DEFENDANT instructed PLAINTIFF to work off the clock in order to avoid working overtime. DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often interrupted by work assignments during his breaks. Indeed there were many days where PLAINTIFF did not even receive a partial meal break. Further, during the CALIFORNIA CLASS PERIOD, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to wait in line and submit to mandatory temperature

1 checks for COVID-19 screening and also complete a COVID -19 questionnaire regarding
2 whether these employees had any symptoms prior to clocking into DEFENDANT's
3 timekeeping systems for the workday. Finally, PLAINTIFF and other members of the
4 CALIFORNIA CLASS from time to time were not paid wages for all the time worked,
5 including overtime wages, such that in the aggregate employees were underpaid wages as
6 a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
7 employees. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members,
8 from time to time, forfeited minimum wage and overtime compensation by working
9 without their time being accurately recorded and without compensation at the applicable
10 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to
11 pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
12 evidenced by DEFENDANT'S business records.

13 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
14 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
15 other CALIFORNIA CLASS Members for the actual time these employees worked each
16 day, including overtime hours. As a result DEFENDANT was able to and did in fact
17 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
18 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
19 paying these employees the applicable overtime compensation for overtime worked and
20 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
21 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
22 working without their time being accurately recorded and without compensation at the
23 applicable overtime rates.

24 10. The mutability of the timekeeping system also allowed DEFENDANT to
25 alter employee time records by recording fictitious thirty (30) minute meal breaks in
26 DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and
27 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
28 when in fact the employees were not at all times provided an off-duty meal break. This

1 practice is a direct result of DEFENDANTS' uniform policy and practice of denying
2 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
3 compensate them for missed meal breaks

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

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

1 employees with off-duty rest periods, which the California Supreme Court defined as
2 time during which an employee is relieved from all work related duties and free from
3 employer control. In so doing, the Court held that the requirement under California law
4 that employers authorize and permit all employees to take rest period means that
5 employers must relieve employees of all duties and relinquish control over how
6 employees spend their time which includes control over the locations where employees
7 may take their rest period. Employers cannot impose controls that prohibit an employee
8 from taking a brief walk – five minutes out, five minutes back. Here, DEFENDANT’s
9 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
10 unconstrained walks and was unlawful based on DEFENDANT’s rule which stated
11 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
12 premises during their rest period.

13 13. State law provides that employees must be paid overtime and meal and rest
14 break premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFF
15 and other CALIFORNIA CLASS Members were compensated at an hourly rate plus
16 incentive pay that was tied to specific elements of an employee’s performance.

17 14. When PLAINTIFF and other CALIFORNIA CLASS Members were not
18 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
19 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
20 complete and accurate wage statements which failed to show, among other things, the
21 time worked, including, work performed in excess of eight (8) hours in a workday and/or
22 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
23 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
24 or her employees with an accurate itemized wage statement in writing showing, among
25 other things, gross wages earned and all applicable hourly rates in effect during the pay
26 period and the corresponding amount of time worked at each hourly rate. Aside, from the
27 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
28 itemized wage statement that lists all the requirements under California Labor Code 226

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

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

15 16. DEFENDANT as a matter of corporate policy, practice and procedure,
16 intentionally, knowingly and systematically failed to reimburse and indemnify the
17 PLAINTIFF and the other CALIFORNIA CLASS Members for required business
18 expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in
19 direct consequence of discharging their duties on behalf of DEFENDANT. Under
20 California Labor Code Section 2802, employers are required to indemnify employees for
21 all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
22 2802 expressly states that "an employer shall indemnify his or her employee for all
23 necessary expenditures or losses incurred by the employee in direct consequence of the
24 discharge of his or her duties, or of his or her obedience to the directions of the employer,
25 even though unlawful, unless the employee, at the time of obeying the directions,
26 believed them to be unlawful."

27 17. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
2 knowingly failed to compensate PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
4 practice of DEFENDANT is intended to purposefully avoid the payment for all time
5 worked as required by California law which allows DEFENDANT to illegally profit and
6 gain an unfair advantage over competitors who complied with the law. To the extent
7 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
8 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

20 19. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
21 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
22 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
23 for more than five (5) hours during a shift without receiving an off-duty meal break.
24 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
25 each workday in which he was required by DEFENDANT to work ten (10) hours of
26 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
27 compensation and in accordance with DEFENDANT’s strict corporate policy and
28 practice. To date, DEFENDANT have not fully paid PLAINTIFF the minimum wage

1 and overtime compensation still owed to his or any penalty wages owed to them under
2 Cal. Lab. Code § 203.

3 **JURISDICTION AND VENUE**

4 20. This Court has jurisdiction over this Action pursuant to California Code of
5 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
6 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
7 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

14 **THE CALIFORNIA CLASS**

15 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
16 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
17 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
18 California class, defined as all individuals who are or previously were employed by
19 Defendant and/or Defendant in California and classified as non-exempt employees (the
20 "CALIFORNIA CLASS") at any time between November 1, 2017 and the date as
21 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
22 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
23 million dollars (\$5,000,000.00).

24 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
26 accordingly.

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

1 25. DEFENDANT, as a matter of company policy, practice and procedure, and
2 in violation of the applicable Labor Code, Industrial Welfare Commissions (“IWC”) Wage
3 Order requirements, and the applicable provisions of California law, intentionally,
4 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
5 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
6 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
7 this work and permits or suffers to permit this work.

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

17 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
18 under California law by:

- 19 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
21 company policies, practices and procedures that failed to pay all wages due
22 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 23 b. Committing an act of unfair competition in violation of the California Unfair
24 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
25 provide mandatory meal and/or rest breaks to PLAINTIFF and the
26 CALIFORNIA CLASS members;
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating

1 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
2 CALIFORNIA CLASS Members with necessary expenses incurred in the
3 discharge of their job duties.

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

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

1 material conflicts between the claims of the representative PLAINTIFF and
2 the members of the CALIFORNIA CLASS that would make class
3 certification inappropriate. Counsel for the CALIFORNIA CLASS will
4 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

12 i. Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA CLASS which would establish
14 incompatible standards of conduct for the parties opposing the
15 CALIFORNIA CLASS; and/or;

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

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

27 i. With respect to the First Cause of Action, the final relief on behalf of
28 the CALIFORNIA CLASS sought does not relate exclusively to

1 restitution because through this claim PLAINTIFF seek declaratory
2 relief holding that the DEFENDANT's policy and practices constitute
3 unfair competition, along with declaratory relief, injunctive relief,
4 and incidental equitable relief as may be necessary to prevent and
5 remedy the conduct declared to constitute unfair competition;

6 c. Common questions of law and fact exist as to the members of the
7 CALIFORNIA CLASS, with respect to the practices and violations of
8 California law as listed above, and predominate over any question affecting
9 only individual CALIFORNIA CLASS Members, and a Class Action is
10 superior to other available methods for the fair and efficient adjudication of
11 the controversy, including consideration of:

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

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

21 1. Inconsistent or varying adjudications with respect to
22 individual members of the CALIFORNIA CLASS, which
23 would establish incompatible standards of conduct for the
24 DEFENDANT; and/or;

25 2. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be
27 dispositive of the interests of the other members not parties to
28

1 the adjudication or substantially impair or impede their ability
2 to protect their interests;

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

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

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

16 a. The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because the DEFENDANT's employment practices are
19 uniform and systematically applied with respect to the CALIFORNIA
20 CLASS.

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

- 1 c. The members of the CALIFORNIA CLASS are so numerous that it is
2 impractical to bring all members of the CALIFORNIA CLASS before the
3 Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
5 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
11 CALIFORNIA 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 CLASS for the injuries sustained;
- 15 g. DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 18 h. The members of the CALIFORNIA CLASS are readily ascertainable from
19 the business records of DEFENDANT; and
- 20 i. Class treatment provides manageable judicial treatment calculated to bring
21 an efficient and rapid conclusion to all litigation of all wage and hour related
22 claims arising out of the conduct of DEFENDANT as to the members of the
23 CALIFORNIA CLASS.

24 31. DEFENDANT maintains records from which the Court can ascertain and
25 identify by job title each of DEFENDANT's employees who as have been systematically,
26 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
27 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to
28

1 include any additional job titles of similarly situated employees when they have been
2 identified.

3 **THE CALIFORNIA LABOR SUB-CLASS**

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

12 33. DEFENDANT, as a matter of company policy, practice and procedure, and
13 in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
14 Order requirements, and the applicable provisions of California law, intentionally,
15 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
16 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
17 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
18 required employees to perform this work and permitted or suffered to permit this overtime
19 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
20 Members minimum and overtime wages at the correct amount to which these employees
21 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
22 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
23 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
24 adjusted accordingly.

25 34. DEFENDANT maintain records from which the Court can ascertain and
26 identify by name and job title, each of DEFENDANT’s employees who have been
27 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
28 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the

1 complaint to include any additional job titles of similarly situated employees when they
2 have been identified.

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

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

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

25 37. DEFENDANT, as a matter of company policy, practice and procedure,
26 failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed
27 to provide accurate records of the time worked by these employees. All of the
28 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-

1 exempt employees who were paid on an hourly basis by DEFENDANT according to
2 uniform and systematic company procedures as alleged herein above. This business
3 practice was uniformly applied to each and every member of the CALIFORNIA LABOR
4 SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-
5 wide basis.

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

- 8 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
9 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
10 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
11 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 12 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
13 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
14 the correct overtime pay for which DEFENDANT are liable pursuant to Cal.
15 Lab. Code § 1194 & § 1198;
- 16 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
17 PLAINTIFF and the other members of the CALIFORNIA CLASS with all
18 legally required off-duty, uninterrupted thirty (30) minute meal breaks and
19 the legally required rest breaks;
- 20 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
21 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
22 itemized statement in writing showing time worked at by the employee;
- 23 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
24 an employee is discharged or quits from employment, the employer must
25 pay the employee all wages due without abatement, by failing to tender full
26 payment and/or restitution of wages owed or in the manner required by
27 California law to the members of the CALIFORNIA LABOR SUB-CLASS
28 who have terminated their employment.

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

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

1 the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims
2 of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
20 or refused to act on grounds generally applicable to the CALIFORNIA
21 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
22 the CALIFORNIA LABOR SUB-CLASS as a whole in that
23 DEFENDANTS uniformly failed to pay all wages due, including the correct
24 overtime rate, for all overtime worked by the members of the CALIFORNIA
25 LABOR SUB-CLASS as required by law;

26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any

1 question affecting only individual CALIFORNIA LABOR SUB-CLASS
2 Members, and a Class Action is superior to other available methods for the
3 fair and efficient adjudication of the controversy, including consideration of:

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

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

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

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

22 iii. In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will
24 avoid asserting their legal rights out of fear of retaliation by
25 DEFENDANT which may adversely affect an individual's job with
26 DEFENDANT or with a subsequent employer, the Class Action is the
27 only means to assert their claims through a representative; and,
28

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

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

26 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
27 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
28

1 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect
2 to unfair competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair competition
4 may be enjoined in any court of competent jurisdiction. The court may make such
5 orders or judgments, including the appointment of a receiver, as may be necessary
6 to prevent the use or employment by any person of any practice which constitutes
7 unfair competition, as defined in this chapter, or as may be necessary to restore to
8 any person in interest any money or property, real or personal, which may have
9 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
10 17203).

11 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to,
13 the applicable Wage Order(s), the California Code of Regulations and the California Labor
14 Code including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 &
15 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
16 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
17 remedy the conduct held to constitute unfair competition, including restitution of wages
18 wrongfully withheld.

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

25 47. By the conduct alleged herein, DEFENDANT's practices were deceptive
26 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
27 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
28 due for overtime worked, and failed to provide the required amount of overtime
compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which

1 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
2 § 17203, including restitution of wages wrongfully withheld.

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

7 49. By the conduct alleged herein, DEFENDANT's practices were also unfair
8 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
9 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
10 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

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

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

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

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

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

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

24 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**

25 **ALL Defendants)**

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

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

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

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

11 61. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
12 wages, including reporting time pay and minimum wage compensation and interest
13 thereon, together with the costs of suit.

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

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

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

1 65. As a direct result of DEFENDANT's unlawful wage practices as alleged
2 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 did not receive the correct reporting time pay and minimum wage compensation for their
4 time worked for DEFENDANT.

5 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
6 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
7 worked than they were entitled to, constituting a failure to pay all earned wages.
8 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
9 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
10 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
11 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
12 work, off the clock time as to which DEFENDANT fails to accurately record and pay as
13 evidence by DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME COMPENSATION**

21 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

22 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**

23 **ALL Defendants)**

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

27 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 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 properly compensate the members of the CALIFORNIA

1 LABOR SUB-CLASS for all overtime worked, including, work performed in excess of
2 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
3 in any workweek.

4 73. 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 74. Cal. Lab. Code § 510 further provides that employees in California shall not
7 be 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
9 amount specified by law.

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

14 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
16 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
17 including overtime work.

18 77. DEFENDANT's uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
20 a whole, as a result of implementing a uniform policy and practice that failed to accurately
21 record overtime worked by PLAINTIFF and the other members of the CALIFORNIA
22 LABOR SUB-CLASS, and denied accurate compensation to PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
24 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a
25 workday, and/or forty (40) hours in any workweek.

26 78. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately records overtime worked and consequently underpays the overtime worked
28 by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.

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

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

8 80. As a direct result of DEFENDANT'S unlawful wage practices as alleged
9 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 did not receive full compensation for all overtime worked.

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

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

22 83. DEFENDANT failed to accurately pay PLAINTIFF and the other members
23 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked
24 which was in excess of the maximum hours permissible by law as required by Cal. Lab.
25 Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work,
27 overtime as to which DEFENDANT failed to accurately record and pay using the
28

1 applicable overtime rate as evidenced by DEFENDANT's business records and witnessed
2 by employees.

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

9 85. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
11 overtime worked. DEFENDANT systematically elected, either through intentional
12 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
13 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
14 systematic scheme by refusing to pay PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

90. 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.

91. 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)

92. 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.

93. 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 DEFENDANT and DEFENDANT's managers.

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

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

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

18 97. Cal. Labor Code § 226 provides that an employer must furnish employees
19 within "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned;
- 21 b. Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment
23 of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission;
- 25 c. The number of piece rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis;
- 27 d. All deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item;
- e. Net wages earned;

- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

98. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

99. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to

1 estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
4 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
5 according to proof at the time of trial (but in no event more than four thousand dollars
6 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR
7 SUB-CLASS herein.

8 **SEVENTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES WHEN DUE**
10 **(Cal. Lab. Code §§201, 202, 203)**
11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
12 **all Defendants)**

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

15 101. Cal. Lab. Code § 200 provides, in relevant part, that:

16 As used in this article:

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

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

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

25 103. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or
27 her employment, his or her wages shall become due and payable not later
28 than 72 hours thereafter, unless the employee has given 72 hours previous
notice of his or her intention to quit, in which case the employee is entitled
to his or her wages at the time of quitting. Notwithstanding any other

1 provision of law, an employee who quits without providing a 72-hour notice
2 shall be entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute the date
4 of payment for purposes of the requirement to provide payment within 72
5 hours of the notice of quitting.

6 104. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
7 SUB-CLASS Members' employment contract.

8 105. Cal. Lab. Code § 203 provides:

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

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

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

24 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

26 **(Cal. Lab. Code §§ 2802)**

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

108. 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.

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

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

5 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
6 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
7 CLASS members for required expenses incurred in the discharge of their job duties for
8 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
9 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were
10 not limited to, costs related to using their personal cellular phones all on behalf of and for
11 the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS
12 Members were required by DEFENDANT to use their personal cell phones to respond to
13 work related issues. DEFENDANT's uniform policy, practice and procedure was to not
14 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
15 expenses resulting from using their personal cellular phones for DEFENDANT within the
16 course and scope of their employment for DEFENDANTS. These expenses were
17 necessary to complete their principal job duties. DEFENDANT are estopped by
18 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
19 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
21 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
22 required to do under the laws and regulations of California.

23 111. PLAINTIFF therefore demands reimbursement for expenditures or losses
24 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge
25 of their job duties for DEFENDANT, or their obedience to the directions of
26 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
2 defined.

3 116. The policies, acts and practices heretofore described were and are an
4 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
5 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
6 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
7 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
8 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
9 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
10 210, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the applicable Industrial
11 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
13 Private Attorney General Act of 2004 as the representative of the State of California for
14 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES.

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

25 PRAYER FOR RELIEF

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

28 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 PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to 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, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation and unreimbursed expenses 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. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- e. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand

dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §226; and

f. 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.

g. Penalties pursuant to Cal. Lab. Code §1198.5.

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; and

b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

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: November 1, 2021

BARVIÉ LAW, APC

By



NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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DEMAND FOR A JURY TRIAL

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

Dated: November 1, 2021

BARVIÉ LAW, APC

By 

NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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EXHIBIT 1

August 25, 2021

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	Ano Douka, Inc. c/o Gregory Economou 1468 Graves Ave. El Cajon, CA 92021 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff Taylor Sanit (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Ano Douka, Inc., a California Corporation (“Defendant”). Plaintiff has been employed by Defendant in California beginning April 25, 2021 to July 3, 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the applicable





Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

Sincerely,

Nicole Barvié
Attorney for Plaintiff