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

CARLOS R.T. PAULO JUNIOR and
MICHAEL BOAVENTURA, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiff,

v.

REI DO GADO CORPORATION, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No: 37-2020-00032342-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;
- 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) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

1 Plaintiffs Carlos R.T. Paulo Junior and Michael Boaventura (“PLAINTIFF” or
2 “PLAINTIFFS”), an individual, on behalf of themselves and all other similarly situated
3 current and former employees, allege on information and belief, except for their own acts
4 and knowledge which are based on personal knowledge, the following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Rei Do Gado Corporation (“DEFENDANT” or “DEFENDANTS”) is a California
7 Corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT operates a Brazilian steakhouse in San Diego County.

10 3. Plaintiff Paulo Junior was employed by DEFENDANT in California from
11 February of 2005 to May of 2018 and was at all times classified by DEFENDANT as a non-
12 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
13 periods and payment of minimum and overtime wages due for all time worked.

14 4. Plaintiff Boaventura was employed by DEFENDANT in California from 2009 to
15 July of 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
16 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
17 and overtime wages due for all time worked.

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

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

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

6 7. 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 the
10 true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF
11 are informed and believe, and based upon that information and belief allege, that the Defendants
12 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some
13 manner for one or more of the events and happenings that proximately caused the injuries and
14 damages hereinafter alleged

15 8. 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 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS
28 and CALIFORNIA CLASS Members to work without paying them for all the time they were

1 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work
2 while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break.
3 PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what
4 should have been PLAINTIFFS' off-duty meal break. Indeed there were many days where
5 PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other
6 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
7 regularly working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not
9 to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced
10 by DEFENDANT's business records.

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

23 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
27 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for
28 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
2 from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also not
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
4 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
5 proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

26 14. By reason of this uniform conduct applicable to PLAINTIFFS and all
27 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
28 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the

1 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
2 calculate and record all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA
3 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the
4 DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the obligation
5 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
6 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
7 California Labor Code and regulations promulgated thereunder as herein alleged.

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

23 **JURISDICTION AND VENUE**

24 16. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
26 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
27 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.
28

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

7
8 **THE CALIFORNIA CLASS**

9 18. 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
13 as 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 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

20 20. 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 systematically failed to record all meal
24 and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
25 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
26 permits or suffers to permit this work.

27 21. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
28 CLASS Member was paid accurately for all meal and rest breaks missed as required by California

1 laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure
2 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place
3 a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as
4 required by law. This common business practice is applicable to each and every CALIFORNIA
5 CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair, and/or deceptive
6 under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
7 and reliance are not elements of this claim.

8 22. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
14 in place company policies, practices and procedures that uniformly and
15 systematically failed to record and pay PLAINTIFFS and the other members of
16 the CALIFORNIA CLASS for all time worked, including minimum wages owed
17 and overtime wages owed for work performed by these employees; and,
18 b. Committing an act of unfair competition in violation of the UCL, by failing to
19 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
20 with the legally required meal and rest periods.

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

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

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

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

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

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

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

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

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

23 i. The interests of the members of the CALIFORNIA CLASS in individually
24 controlling the prosecution or defense of separate actions in that the
25 substantial expense of individual actions will be avoided to recover the
26 relatively small amount of economic losses sustained by the individual
27 CALIFORNIA CLASS Members when compared to the substantial
28 expense and burden of individual prosecution of this litigation;

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

3 1. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA CLASS, which would establish
5 incompatible standards of conduct for the DEFENDANT; and/or;

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

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

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

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

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

- 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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

27. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
2 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

25 30. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT's employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
28

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
2 additional job titles of similarly situated employees when they have been identified.

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

5 32. 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 correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
- 11 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
12 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
13 statements;
- 14 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
15 conduct;
- 16 d. The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and
- 18 e. Whether DEFENDANT's conduct was willful.

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

- 21 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
22 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all
23 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
24 Lab. Code § 1194;
- 25 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
26 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
27 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
28 Lab. Code §§ 1194 and 1197;

- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks;
- 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.

34. 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 PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the

CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
 - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- 1 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
2 refused to act on grounds generally applicable to the CALIFORNIA LABOR
3 SUB-CLASS, making appropriate class-wide relief with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
5 fails to pay all wages due. Including the correct wages for all time worked by the
6 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 7 c. Common questions of law and fact predominate as to the members of the
8 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
9 of California Law as listed above, and predominate over any question affecting
10 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
11 Action is superior to other available methods for the fair and efficient adjudication
12 of the controversy, including consideration of:
- 13 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
14 in individually controlling the prosecution or defense of separate actions in
15 that the substantial expense of individual actions will be avoided to recover
16 the relatively small amount of economic losses sustained by the individual
17 CALIFORNIA LABOR SUB-CLASS Members when compared to the
18 substantial expense and burden of individual prosecution of this litigation;
- 19 ii. Class certification will obviate the need for unduly duplicative litigation
20 that would create the risk of:
- 21 1. Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS would as a practical matter
27 be dispositive of the interests of the other members not parties to
28

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

3 iii. In the context of wage litigation because a substantial number of individual
4 CALIFORNIA LABOR SUB-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 their
8 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 obviate
11 the need for unduly and unnecessary duplicative litigation that is likely to
12 result in the absence of certification of this action pursuant to Cal. Code of
13 Civ. Proc. § 382.

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

- 16 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
17 CLASS predominate over any question affecting only individual CALIFORNIA
18 LABOR SUB-CLASS Members;
- 19 b. A Class Action is superior to any other available method for the fair and efficient
20 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
21 CLASS because in the context of employment litigation a substantial number of
22 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
23 their rights individually out of fear of retaliation or adverse impact on their
24 employment;
- 25 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
26 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
27 before the Court;
- 28

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

5 37. PLAINTIFFS, 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 38. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 39. 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 competition
13 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
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 40. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

3 42. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods, the required amount of compensation for missed meal and rest
6 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
7 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
8 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
9 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
10 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

27 47. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 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 48. 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 Labor
7 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
8 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
9 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

10 49. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
11 to, 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 unfair
14 business practices, including earned but unpaid wages for all time worked.

15 50. PLAINTIFFS 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 51. PLAINTIFFS 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 of
21 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
22 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANT is restrained from continuing to engage in these
25 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)**

52. PLAINTIFFS, 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.

53. PLAINTIFFS 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 PLAINTIFFS and CALIFORNIA CLASS Members.

54. 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.

55. 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.

56. 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.

57. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS 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 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

1 property and legal rights, and otherwise causing them injury in order to increase company profits
2 at the expense of these employees.

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

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

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

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

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

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

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

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

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

28 75. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the

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

6 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for overtime worked
8 than they were entitled to, constituting a failure to pay all earned wages.

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

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

21 79. DEFENDANT knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
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, practice
25 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
27 worked.

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

26 83. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
27 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
28 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR

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

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

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

21
22 **FIFTH CAUSE OF ACTION**

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

25 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **Defendants)**

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

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

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

16 89. As a proximate result of the aforementioned violations, PLAINTIFFS and
17 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
18 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
19

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
22 **(Cal. Lab. Code § 226)**

23 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
24 **against all Defendants)**

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

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

- a. Gross wages earned;
- b. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the 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.

92. When DEFENDANT did not accurately record PLAINTIFFS' and other CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all minimum and overtime wages and missed meal and rest period payments owed to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

1 93. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
2 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
3 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
4 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
5 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
6 Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
7 may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which
8 the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
9 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
10 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
11 member of the CALIFORNIA LABOR SUB-CLASS herein).

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WHEN DUE**

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

15 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
16 **Defendants)**

17 94. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

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

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

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

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

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

7 98. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-
8 CLASS Members' employment contract.

9 99. Cal. Lab. Code § 203 provides:

10 If an employer willfully fails to pay, without abatement or reduction, in accordance
11 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
12 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.

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

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

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EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFFS against all Defendants)

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

103. 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.

104. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT as sales persons in California during the time period of March 9, 2019 until the present (the "AGGRIEVED EMPLOYEES").

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray 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;

- 1 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and
- 4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 8 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
9 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
10 pursuant to Cal. Code of Civ. Proc. § 382;
- 11 b. Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
14 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 15 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
16 the applicable IWC Wage Order;
- 17 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
18 which a violation occurs and one hundred dollars (\$100) per member of the
19 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
20 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
21 an award of costs for violation of Cal. Lab. Code § 226;
- 22 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
23 CLASS as a penalty from the due date thereof at the same rate until paid or until an
24 action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
- 25 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
26 1197.
- 27 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 28 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 §1197.

DATED: September 12, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

DATED: September 12, 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

Client #26501

March 9, 2020

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

REI DO GADO CORPORATION
c/o BOK YURN GI
939 FOURTH STREET
SAN DIEGO CA 92101

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

Dear Sir/Madam:

Our offices represent Plaintiffs Michael Boaventura (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against REI DO GADO CORPORATION (“Defendant”). Plaintiff was employed by Defendant in California between 2009 and July 2019 as a nonexempt employee entitled to overtime and the legally required meal and rest breaks and payment for all time worked under Defendants’ control, including minimum wage and overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wage and overtime wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the 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 incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved 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,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized, flowing script.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue Suite C204
San Diego, CA 92110
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
Website: www.zakaylaw.com

Attorneys for Plaintiffs

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

CARLOS R.T. PAULO JUNIOR and
MICHAEL BOAVENTURA, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

REI DO GADO CORPORATION, a
California Corporation; and DOES 1 through
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;
- and,
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

1 Plaintiffs Carlos R.T. Paulo Junior and Michael Boaventura (“PLAINTIFFS”),
2 individuals, on behalf of themselves and all other similarly situated current and former
3 employees alleges on information and belief, except for their own acts and knowledge which
4 are based on personal knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Rei Do Gado Corporation (“DEFENDANT”) is a California
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT owns and operates a Brazilian steakhouse in San Diego County.

11 3. Plaintiff Paulo Junior was employed by DEFENDANT in California from
12 February of 2005 to May of 2018 and was at all times classified by DEFENDANT as a non-
13 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
14 periods and payment of minimum and overtime wages due for all time worked.

15 4. Plaintiff Boaventura was employed by DEFENDANT in California from 2009 to
16 July of 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid
17 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
18 minimum and overtime wages due for all time worked.

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

26 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
27 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
28

1 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy
2 and practice which failed to lawfully compensate these employees. DEFENDANT's uniform
3 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
4 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
7 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS
8 who have been economically injured by DEFENDANT's past and current unlawful conduct,
9 and all other appropriate legal and equitable relief.

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and 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. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. Indeed there were many days where PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

10. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the production levels

1 for each employee at the busy airports they provided services for.

2 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
3 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
5 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
6 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
7 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
8 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
9 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
10 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
11 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
12 proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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

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

5 ///

6 **JURISDICTION AND VENUE**

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

11 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT,
13 resides in this County, and DEFENDANT (i) currently maintains and at all relevant times
14 maintained offices and facilities in this County and/or conducts substantial business in this
15 County, and (ii) committed the wrongful conduct herein alleged in this County against members
16 of the CALIFORNIA CLASS.

17 **THE CALIFORNIA CLASS**

18 18. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
21 all individuals who are or previously were employed by DEFENDANT in California and
22 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
23 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).
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1 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 20. DEFENDANT, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
8 and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even
9 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
10 work and permits or suffers to permit this work.

11 21. DEFENDANT has the legal burden to establish that each and every
12 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
13 required by California laws. The DEFENDANT, however, as a matter of uniform and
14 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
15 PERIOD and still fails to have in place a policy or practice to ensure that each and every
16 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
17 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
18 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
19 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

20 22. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

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

- 24 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
25 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
26 deceptively having in place company policies, practices and procedures
27 that uniformly and systematically failed to record and pay PLAINTIFFS
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1 and the other members of the CALIFORNIA CLASS for all time worked,
2 including minimum wages owed and overtime wages owed for work
3 performed by these employees; and,

- 4 (b) Committing an act of unfair competition in violation of the UCL, by
5 failing to provide the PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS with the legally required meal and rest periods;

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

- 9 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
10 that the joinder of all such persons is impracticable and the disposition of
11 their claims as a class will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
13 that are raised in this Complaint are common to the CALIFORNIA
14 CLASS will apply uniformly to every member of the CALIFORNIA
15 CLASS;
- 16 (c) The claims of the representative PLAINTIFFS are typical of the claims of
17 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
18 other members of the CALIFORNIA CLASS, were classified as a non-
19 exempt employee paid on an hourly basis who was subjected to the
20 DEFENDANT's deceptive practice and policy which failed to provide the
21 legally required meal and rest periods to the CALIFORNIA CLASS and
22 thereby systematically underpaid compensation to PLAINTIFFS and
23 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
24 result of DEFENDANT's employment practices. PLAINTIFFS and the
25 members of the CALIFORNIA CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair and pervasive
27 pattern of misconduct engaged in by DEFENDANT; and,
- 28

1 (d) The representative PLAINTIFFS will fairly and adequately represent and
2 protect the interest of the CALIFORNIA CLASS, and has retained
3 counsel who are competent and experienced in Class Action litigation.
4 There are no material conflicts between the claims of the representative
5 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
6 make class certification inappropriate. Counsel for the CALIFORNIA
7 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
8 Members.

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

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

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA CLASS which would establish
17 incompatible standards of conduct for the parties opposing the
18 CALIFORNIA CLASS; and/or,

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

24 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
25 act on grounds generally applicable to the CALIFORNIA CLASS, making
26 appropriate class-wide relief with respect to the CALIFORNIA CLASS
27 as a whole in that DEFENDANT uniformly failed to pay all wages due to
28

members of the CALIFORNIA CLASS as required by law;

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

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

1) The interests of the members of the CALIFORNIA 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;

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

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

1 DEFENDANT; and/or,

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

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

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

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

20 (a) The questions of law and fact common to the CALIFORNIA CLASS
21 predominate over any question affecting only individual CALIFORNIA
22 CLASS Members because the DEFENDANT's employment practices are
23 uniform and systematically applied with respect to the CALIFORNIA
24 CLASS;

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 CLASS because in the context of employment litigation a substantial
28

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the
6 Court;

7 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

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

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

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

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

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

27 27. DEFENDANT maintains records from which the Court can ascertain and identify
28

1 by job title each of DEFENDANT's employees who as have been systematically, intentionally
2 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
3 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job
4 titles of similarly situated employees when they have been identified.

5
6 **THE CALIFORNIA LABOR SUB-CLASS**

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

15 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
19 compensation for the time worked by PLAINTIFFS and the other members of the
20 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even
21 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
22 work and permitted or suffered to permit this work. DEFENDANT has uniformly denied these
23 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
24 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
25 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
26 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

27 30. DEFENDANT maintains records from which the Court can ascertain and identify
28

1 by name and job title, each of DEFENDANT's employees who have been systematically,
2 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
3 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include
4 any additional job titles of similarly situated employees when they have been identified.

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

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

- 9 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 compensation due to members of the CALIFORNIA LABOR SUB-
11 CLASS for missed meal and rest breaks in violation of the California
12 Labor Code and California regulations and the applicable California Wage
13 Order;
- 14 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with accurate
16 itemized wage statements;
- 17 (c) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
- 19 (d) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
- 21 (e) Whether DEFENDANT's conduct was willful.

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

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

- 1 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
2 accurately pay PLAINTIFFS and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct minimum wage pay for which
4 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 5 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
6 the members of the CALIFORNIA LABOR SUB-CLASS with an
7 accurate itemized statement in writing showing the corresponding correct
8 amount of wages earned by the employee;
- 9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
11 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
12 and the legally required off-duty rest breaks; and,
- 13 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the employer
15 must pay the employee all wages due without abatement, by failing to
16 tender full payment and/or restitution of wages owed or in the manner
17 required by California law to the members of the CALIFORNIA LABOR
18 SUB-CLASS who have terminated their employment.

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

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

CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

1) Inconsistent or varying adjudications with respect to individual

members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA

LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

4) 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.

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

15 37. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

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

20 39. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
23 competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver, as
27 may be necessary to prevent the use or employment by any person of any practice
28 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.

1 Cal. Bus. & Prof. Code § 17203.

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

9 41. By the conduct alleged herein, DEFENDANT's practices were unlawful and
10 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
11 unscrupulous or substantially injurious to employees, and were without valid justification or
12 utility for which this Court should issue equitable and injunctive relief pursuant to Section
13 17203 of the California Business & Professions Code, including restitution of wages wrongfully
14 withheld.

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

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

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

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

10 46. PLAINTIFFS further demand on behalf of themselves and each member of the
11 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
12 duty paid rest period was not timely provided as required by law.

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

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

24 49. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
25 to, and do, seek such relief as may be necessary to restore to them the money and property
26 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
28

1 unfair business practices, including earned but unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

27 54. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
28

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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

26 61. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
27 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
28

1 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

25 75. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
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1 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
2 subject to a valid collective bargaining agreement that would preclude the causes of action
3 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of
4 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
5 of non-negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

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22 **FOURTH CAUSE OF ACTION**

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

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

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

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

1 paragraphs of this Complaint.

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

11 (1) gross wages earned,

12 (2) total hours worked by the employee, except for any employee whose compensation
13 is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
15 Commission,

16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,

18 (4) all deductions, provided that all deductions made on written orders of the employee
19 may be aggregated and shown as one item,

20 (5) net wages earned,

21 (6) the inclusive dates of the period for which the employee is paid,

22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,

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

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

2 92. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
3 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
4 statements which failed to show, among other things, the correct wages paid. Cal. Lab. Code
5 § 226 provides that every employer shall furnish each of his or her employees with an accurate
6 itemized wage statement in writing showing, among other things, gross wages earned and all
7 applicable hourly rates in effect during the pay period and the corresponding amount of time
8 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
9 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
10 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
11 time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with wage statements which violated Cal. Lab. Code § 226.

13 93. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFFS and the other members of the
15 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
16 expended calculating the correct wages for all missed meal and rest breaks and the amount of
17 employment taxes which were not properly paid to state and federal tax authorities. These
18 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
19 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
20 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
21 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in
22 an amount according to proof at the time of trial (but in no event more than four thousand
23 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
24 LABOR SUB-CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the 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
be paid for is performed personally by the person demanding payment.

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

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

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

24 98. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
25 SUB-CLASS Members' employment contract.

26 99. Cal. Lab. Code § 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee

1 who is discharged or who quits, the wages of the employee shall continue as a
2 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.

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

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

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13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

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

- 28 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes

1 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
2 pursuant to Cal. Code of Civ. Proc. § 382;

3 B) Compensatory damages, according to proof at trial, including compensatory
4 damages for minimum and overtime compensation due PLAINTIFFS and the
5 other members of the CALIFORNIA LABOR SUB-CLASS, during the
6 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
7 at the statutory rate;

8 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per each member of
10 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
11 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
12 an award of costs for violation of Cal. Lab. Code § 226;

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

16 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
17 the applicable IWC Wage Order;

18 F) The amount of the expenses PLAINTIFFS and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit; and,

21 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
22 1197.

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- 1 3. On all claims:
- 2 A) An award of interest, including prejudgment interest at the legal rate;
- 3 B) Such other and further relief as the Court deems just and equitable; and,
- 4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.
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7 Dated: March 09, 2020

ZAKAY LAW GROUP, APLC

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10 By: _____

11 Shani O. Zakay

12 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: March 09, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiffs

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