

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

ACES 2020 I, LLC, a Delaware limited liability company (fka Comprehensive Educational Services, Inc.); ACES 2020, LLC, a California limited liability company (fka Comprehensive Educational Services, Inc.); and DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SUKHRAJ KAUR, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Contra Costa Superior Court, Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER
(Número del Caso) 20-02482

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE:
(Fecha)

NOV 19 2020

Clerk, by
(Secretario)

A. STEWART, Deputy
(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

VIA FAX

ZAKAY LAW GROUP, APLC

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San Diego, CA 92121

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PER LOCAL RULE, THIS

CASE IS ASSIGNED TO

DEPT 39 FOR ALL
PURPOSES

JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

3990 Old Town Avenue, Suite C204

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

SUKHRAJ KAUR, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ACES 2020 I, LLC, a Delaware limited
liability company (fka Comprehensive
Educational Services, Inc.); ACES 2020, LLC,
a California limited liability company (fka
Comprehensive Educational Services, Inc.);
and DOES 1 through 50, inclusive,

Defendants.

Case No:

C20 - 02482

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 REIMURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CAL. LAB. CODE §
2802;
- 8) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203; and
- 9) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

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

4 5 **THE PARTIES**

6 1. Defendant ACES 2020 I, LLC (“ACES Delaware”) is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California. Defendant ACES 2020, LLC (“ACES California”) is a limited
9 liability company that at all relevant times mentioned herein conducted and continues to conduct
10 substantial business in the state of California. ACES Delaware and ACES California are referred
11 to herein collectively as “DEFENDANTS” or “DEFENDANT.”

12 2. Defendant ACES Delaware and Defendant ACES California were the joint
13 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
14 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” or
16 “DEFENDANT.”

17 3. DEFENDANTS provide professional services in psychology, occupational and
18 speech therapies, and education throughout California.

19 4. PLAINTIFF was employed by DEFENDANTS in California between September
20 2018 and January 2020 and was at all times classified by DEFENDANTS as a non-exempt
21 employee, paid on an hourly basis, and entitled bonuses, and to the legally required meal and rest
22 periods and payment of minimum and overtime wages due for all time worked.

23 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
24 defined as all individuals who are or previously were employed by ACES Delaware and/or ACES
25 California in California and classified as non-exempt employees (the “CALIFORNIA CLASS”)
26 at any time between April 6, 2016 and during the period beginning four (4) years prior to the
27 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
28 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
CLASS Members is under five million dollars (\$5,000,000.00).

1 6. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees. DEFENDANTS' uniform policy and
5 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
6 DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members
7 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
8 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
9 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
10 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
11 equitable relief.

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF 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 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. Specifically, on many occasions PLAINTIFF had to take her meal break while traveling between one appointment to another appointment, when she was legally required to remain on the clock. As a result, the PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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. PLAINTIFF 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 PLAINTIFF 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. PLAINTIFF 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.

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

14 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
15 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
16 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
17 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
18 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for
20 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform
21 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime
22 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's
23 business records.

24 13. State law provides that employees must be paid overtime at one-and-one-halftimes
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 14. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all employees
5 paid on an hourly basis with incentive compensation when the employees met the various
6 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
7 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
8 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
9 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
10 incentive program to potential and new employees as part of the compensation package. As a
11 matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
12 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
13 in a systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
14 CLASS Members by DEFENDANT.

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

25 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
27 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
28 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all

1 time worked, meaning the time during which an employee was subject to the control of an
2 employer, including all the time the employee was permitted or suffered to permit this work.
3 DEFENDANT required these employees to work off the clock without paying them for all the
4 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
5 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
6 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
7 Members forfeited time worked by working without their time being accurately recorded and
8 without compensation at the applicable minimum wage and overtime wage rates. To the extent
9 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
10 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
11 1194, 1197, and 1197.1.

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

23 18. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
24 Members as a business expense, were required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
26 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
27 their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
28 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell

1 phones for work related issues, including to speak with their clients and as a GPS to locate the
2 addresses for their appointments. As a result, in the course of their employment with
3 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
4 unreimbursed business expenses which included, but were not limited to, costs related to the use
5 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

27 21. By reason of this uniform conduct applicable to PLAINTIFF and all
28 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in

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

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

23 **JURISDICTION AND VENUE**

24 23. 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 PLAINTIFF and similarly situated employees of
27 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

6 **THE CALIFORNIA CLASS**

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

15 26. On April 6, 2020, due to the impact of the COVID-19 pandemic on California's
16 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which states
17 that, "Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled
18 from April 6, 2020, until 90 days after the Governor declare that the state of emergency related
19 COVID-19 pandemic is lifted."

20 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
21 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
22 accordingly.

23 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
27 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
28

1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
2 permits or suffers to permit this work.

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

12 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
15 California law by:

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

- 1 d. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 et seq., by violating Cal. Lab.
3 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
4 members with necessary expenses incurred in the discharge of their job duties.

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

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

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

33. 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 CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members were properly classified as independent contractors, and thereby denied these employees wages and payments for business expenses and the employer's share of payroll taxes and mandatory insurance as required by law.
 - i. 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 PLAINTIFF seeks declaratory relief holding that the DEFENDANTS' policies and practices constitute unfair

1 competition, along with declaratory relief, injunctive relief, and incidental
2 relief as may be necessary to prevent and remedy the conduct declared to
3 constitute unfair competition;

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

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA CLASS Members will avoid asserting their legal rights out
28 of fear of retaliation by DEFENDANT, which may adversely affect an

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

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

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

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

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

13 35. DEFENDANT maintains records from which the Court can ascertain and identify
14 by name job title each of DEFENDANT’S employees who have been systematically, intentionally
15 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as
16 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job
17 titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 37. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation
3 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed
5 the benefit of this work, required employees to perform this work and permitted or suffered to
6 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
7 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
8 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
9 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
10 CLASS PERIOD should be adjusted accordingly.

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

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

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

- 20 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
22 missed meal and rest breaks in violation of the California Labor Code and
23 California regulations and the applicable California Wage Order;
- 24 b. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
25 wages due to members of the CALIFORNIA LABOR SUB-CLASS in violation
26 of the California Labor Code and California regulations and the applicable
27 California Wage Order;
- 28

- 1 c. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
3 statements;
4 d. Whether DEFENDANT has engaged in unfair competition by the above listed
5 conduct;
6 e. The proper measure of damages and penalties owed to the members of the
7 CALIFORNIA LABOR SUB-CLASS; and,
8 f. Whether DEFENDANT's conduct was willful.

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

- 11 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
13 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
14 Lab. Code § 1194;
15 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately
16 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
17 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
18 Lab. Code §§ 1194 and 1197;
19 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
21 statement in writing showing the corresponding correct amount of wages earned
22 by the employee;
23 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
25 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
26 required off-duty rest breaks;

27
28

- 1 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
2 CALIFORNIA CLASS members with necessary expenses incurred in the
3 discharge of their job duties; and,
4 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment

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

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

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and,

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

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

- 13 a. Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
16 the risk of:
- 17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA LABOR SUB-CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA LABOR SUB-CLASS; or
- 21 ii. Adjudication with respect to individual members of the CALIFORNIA
22 LABOR SUB-CLASS which would as a practical matter be dispositive of
23 interests of the other members not party to the adjudication or substantially
24 impair or impede their ability to protect their interests.
- 25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR
27 SUB-CLASS, making appropriate class-wide relief with respect to the
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly

1 fails to pay all wages due. Including the correct wages for all time worked by the
2 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
28 legal rights out of fear of retaliation by DEFENDANT, which may

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

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

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

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

1 DEFENDANT’S’ actions have inflicted upon the CALIFORNIA LABOR SUB-
2 CLASS;

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

17 **FIRST CAUSE OF ACTION**

18 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

24 46. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof.
25 Code § 17021.

26 47. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
28

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

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

11 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
14 Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198 & 2802, for which
15 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
16 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
17 competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

23 56. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

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)

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

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

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

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

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

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

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

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

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

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

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

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

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

21 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
23 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
24 the California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
2 CLASS Members are entitled to seek and recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME COMPENSATION** 5 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

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

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

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

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

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

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

25 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
27 DEFENDANT and were not paid for all the time they worked, including overtime work.

28 80. 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

1 of implementing a uniform policy and practice that failed to accurately calculate the overtime rate,
2 and accurately record overtime worked by PLAINTIFF, and other CALIFORNIA LABOR SUB-
3 CLASS Members and denied accurate compensation to PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work
5 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
6 forty (40) hours in any workweek.

7 81. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately recorded overtime worked and inaccurately calculated the overtime rate, and
9 consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-
10 SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all
11 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
12 Commission requirements and other applicable laws and regulations.

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

16 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
17 the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
18 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and
19 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid
20 collective bargaining agreement that would preclude the causes of action contained herein this
21 Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA
22 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
23 rights provided by the State of California.

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

27 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
28 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
2 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
3 employees.

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

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

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited

1 meal breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

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

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

8 100. From time to time, when DEFENDANT did not accurately record PLAINTIFF's
9 and other CALIFORNIA CLASS Members' minimum and overtime wages earned and/or missed
10 meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed
11 to provide an accurate wage statement in writing that properly and accurately itemizes all missed
12 meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages
14 earned by the employees.

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

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

3 **(Cal. Lab. Code § 2802)**

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

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

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

9 An employer shall indemnify his or her employee for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her
11 duties, or of his or her obedience to the directions of the employer, even though
12 unlawful, unless the employee, believing the directions to be unlawful,

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

105. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties

1 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
2 statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **EIGHTH CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES WHEN DUE**
6 **(Cal. Lab. Code §§201, 202, 203)**

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

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

12 107. Cal. Lab. Code § 200 provides that:

13 As used in this article: (a) "Wages" includes all amounts for labor performed by
14 employees of every description, whether the amount is fixed or ascertained by the
15 standard of time, task, piece, Commission basis, or other method of calculation. (b)
16 "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.

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

20 109. Cal. Lab. Code § 202 provides, in relevant part, that:

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

27 110. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-
28 CLASS Members' employment contract.

111. Cal. Lab. Code § 203 provides:

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

112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT have not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

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

115. 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.

116. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all of DEFENDANTS' current and former California non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period between April 6, 2019 and the present ("PAGA PERIOD").

117. On September 12, 2020, PLAINTIFF 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, PLAINTIFF 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.

118. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF 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, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802 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 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

119. 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, PLAINTIFF seeks penalties for those violations that

1 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
2 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
3 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
4 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
5 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
8 severally, as follows:

9
10 1. On behalf of the CALIFORNIA CLASS:

- 11 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
12 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 b. An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
15 c. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund
16 for restitution of the sums incidental to DEFENDANT’S violations due to
17 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
21 action pursuant to Cal. Code of Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages due PLAINTIFF and the other members of the CALIFORNIA LABOR
24 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
25 PERIOD plus interest thereon at the statutory rate;
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per member of the
2 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226; and

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

8 f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
10 costs of suit.

11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
13 Attorneys General Act of 2004; and

14 4. On all claims:

- 15 a. An award of interest, including prejudgment interest at the legal rate;
16 b. Such other and further relief as the Court deems just and equitable; and
17 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code § 226, § 1198 and/or § 2802.

19 DATED: November 16, 2020

20
21 By: 

22 Shani O. Zakay
23 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: November 16, 2020

ZAKAY LAW GROUP, APLC

By: 
Shari O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #30801

September 12, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

ACES 2020 I, LLC c/o JAMES DANERI 800 SILVERADO ST., 2ND FLOOR LA JOLLA CA 92037	ACES 2020, LLC c/o GRACE ILAS SAGUN HARLEY 1952 HOWE DRIVE, SUITE B SAN LEANDRO CA 94578-1319
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Re: Notice of Violations of California Labor Code Sections 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff SUKHRAJ KAUR (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against **ACES 2020 I, LLC**, a Delaware limited liability company and **ACES 2020, LLC** a California limited liability company (“Defendants”). Plaintiff was employed by Defendants in California between September 2018 and January 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as minimum wages. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendants also failed to pay Plaintiff’s and other aggrieved employees’ minimum wages and overtime and meal and rest break premiums. Defendants also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, 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 Defendants 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 Statute 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 flourish at the end.

Shani O. Zakay
Attorney for SUKHRAJ KAUR

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Website: www.jcl-lawfirm.com
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

SUKHRAJ KAUR, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ACES 2020 I, LLC, a Delaware limited
liability company; ACES 2020, LLC, a
California limited liability company (fka
Comprehensive Educational Services, Inc.);
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;
- 7) FAILURE TO REIMURSE EXMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

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

4 5 **THE PARTIES**

6 1. Defendant ACES 2020 I, LLC (“ACES Delaware”) is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California. Defendant ACES 2020, LLC (“ACES California”) is a limited
9 liability company that at all relevant times mentioned herein conducted and continues to conduct
10 substantial business in the state of California. ACES Delaware and ACES California are referred
11 to herein collectively as “DEFENDANTS” or “DEFENDANT.”

12 2. Defendant ACES Delaware and Defendant ACES California were the joint
13 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
14 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” or
16 “DEFENDANT.”

17 3. DEFENDANTS provide professional services in psychology, occupational and
18 speech therapies, and education throughout California.

19 4. PLAINTIFF was employed by DEFENDANTS in California between September
20 2018 and January 2020 and was at all times classified by DEFENDANTS as a non-exempt
21 employee, paid on an hourly basis, and entitled bonuses, and to the legally required meal and rest
22 periods and payment of minimum and overtime wages due for all time worked.

23 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
24 defined as all individuals who are or previously were employed by ACES Delaware and/or ACES
25 California in California and classified as non-exempt employees (the “CALIFORNIA CLASS”)
26 at any time between April 6, 2016 and during the period beginning four (4) years prior to the
27 filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA
28 CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
CLASS Members is under five million dollars (\$5,000,000.00).

1 6. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees. DEFENDANTS' uniform policy and
5 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
6 DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members
7 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
8 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
9 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
10 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
11 equitable relief.

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

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

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF 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 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. Specifically, on many occasions PLAINTIFF had to take her meal break while traveling between one appointment to another appointment, when she was legally required to remain on the clock. As a result, the PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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. PLAINTIFF 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 PLAINTIFF 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. PLAINTIFF 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.

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

14 12. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
15 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
16 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
17 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
18 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for
20 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform
21 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime
22 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's
23 business records.

24 13. State law provides that employees must be paid overtime at one-and-one-halftimes
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 14. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all employees
5 paid on an hourly basis with incentive compensation when the employees met the various
6 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
7 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
8 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
9 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
10 incentive program to potential and new employees as part of the compensation package. As a
11 matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
12 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
13 in a systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
14 CLASS Members by DEFENDANT.

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

25 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
27 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
28 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all

1 time worked, meaning the time during which an employee was subject to the control of an
2 employer, including all the time the employee was permitted or suffered to permit this work.
3 DEFENDANT required these employees to work off the clock without paying them for all the
4 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
5 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
6 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
7 Members forfeited time worked by working without their time being accurately recorded and
8 without compensation at the applicable minimum wage and overtime wage rates. To the extent
9 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
10 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
11 1194, 1197, and 1197.1.

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

23 18. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
24 Members as a business expense, were required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
26 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
27 their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
28 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell

1 phones for work related issues, including to speak with their clients and as a GPS to locate the
2 addresses for their appointments. As a result, in the course of their employment with
3 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
4 unreimbursed business expenses which included, but were not limited to, costs related to the use
5 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

27 21. By reason of this uniform conduct applicable to PLAINTIFF and all
28 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in

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

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

23 **JURISDICTION AND VENUE**

24 23. 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 PLAINTIFF and similarly situated employees of
27 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

THE CALIFORNIA CLASS

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

26. On April 6, 2020, due to the impact of the COVID-19 pandemic on California’s judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which states that, “Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the Governor declare that the state of emergency related COVID-19 pandemic is lifted.”

27. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

28. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though

1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
2 permits or suffers to permit this work.

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

12 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
15 California law by:

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

- 1 d. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 et seq., by violating Cal. Lab.
3 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
4 members with necessary expenses incurred in the discharge of their job duties.

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

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

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

33. 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 CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members were properly classified as independent contractors, and thereby denied these employees wages and payments for business expenses and the employer's share of payroll taxes and mandatory insurance as required by law.
 - i. 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 PLAINTIFF seeks declaratory relief holding that the DEFENDANTS' policies and practices constitute unfair

1 competition, along with declaratory relief, injunctive relief, and incidental
2 relief as may be necessary to prevent and remedy the conduct declared to
3 constitute unfair competition;

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

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA CLASS Members will avoid asserting their legal rights out
28 of fear of retaliation by DEFENDANT, which may adversely affect an

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

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

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

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

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

13 35. DEFENDANT maintains records from which the Court can ascertain and identify
14 by name job title each of DEFENDANT’S employees who have been systematically, intentionally
15 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as
16 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job
17 titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 37. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation
3 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed
5 the benefit of this work, required employees to perform this work and permitted or suffered to
6 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
7 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
8 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
9 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
10 CLASS PERIOD should be adjusted accordingly.

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

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

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

- 20 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
22 missed meal and rest breaks in violation of the California Labor Code and
23 California regulations and the applicable California Wage Order;
- 24 b. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
25 wages due to members of the CALIFORNIA LABOR SUB-CLASS in violation
26 of the California Labor Code and California regulations and the applicable
27 California Wage Order;
- 28

- 1 c. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
3 statements;
4 d. Whether DEFENDANT has engaged in unfair competition by the above listed
5 conduct;
6 e. The proper measure of damages and penalties owed to the members of the
7 CALIFORNIA LABOR SUB-CLASS; and,
8 f. Whether DEFENDANT's conduct was willful.

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

- 11 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
13 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
14 Lab. Code § 1194;
15 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately
16 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
17 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
18 Lab. Code §§ 1194 and 1197;
19 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
21 statement in writing showing the corresponding correct amount of wages earned
22 by the employee;
23 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally
25 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
26 required off-duty rest breaks;

27
28

- 1 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
2 CALIFORNIA CLASS members with necessary expenses incurred in the
3 discharge of their job duties; and,
4 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment

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

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

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and,

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

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

- 13 a. Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
16 the risk of:
- 17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA LABOR SUB-CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA LABOR SUB-CLASS; or
- 21 ii. Adjudication with respect to individual members of the CALIFORNIA
22 LABOR SUB-CLASS which would as a practical matter be dispositive of
23 interests of the other members not party to the adjudication or substantially
24 impair or impede their ability to protect their interests.
- 25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR
27 SUB-CLASS, making appropriate class-wide relief with respect to the
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly

1 fails to pay all wages due. Including the correct wages for all time worked by the
2 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
28 legal rights out of fear of retaliation by DEFENDANT, which may

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

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

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

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

1 DEFENDANT’S’ actions have inflicted upon the CALIFORNIA LABOR SUB-
2 CLASS;

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

17 **FIRST CAUSE OF ACTION**

18 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

24 46. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof.
25 Code § 17021.

26 47. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
28

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

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

11 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
14 Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198 & 2802, for which
15 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
16 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
17 competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

23 56. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

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)

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

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

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

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

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

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

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

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

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

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

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

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

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

21 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
23 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
24 the California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
26 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
27 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
2 CLASS Members are entitled to seek and recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME COMPENSATION** 5 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

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

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

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

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

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

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

25 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
27 DEFENDANT and were not paid for all the time they worked, including overtime work.

28 80. 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

1 of implementing a uniform policy and practice that failed to accurately calculate the overtime rate,
2 and accurately record overtime worked by PLAINTIFF, and other CALIFORNIA LABOR SUB-
3 CLASS Members and denied accurate compensation to PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work
5 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
6 forty (40) hours in any workweek.

7 81. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately recorded overtime worked and inaccurately calculated the overtime rate, and
9 consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-
10 SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all
11 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
12 Commission requirements and other applicable laws and regulations.

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

16 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
17 the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
18 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and
19 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid
20 collective bargaining agreement that would preclude the causes of action contained herein this
21 Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA
22 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
23 rights provided by the State of California.

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

27 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
28 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
2 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
3 employees.

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

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

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited

1 meal breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

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

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

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

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

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

8 100. From time to time, when DEFENDANT did not accurately record PLAINTIFF's
9 and other CALIFORNIA CLASS Members' minimum and overtime wages earned and/or missed
10 meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed
11 to provide an accurate wage statement in writing that properly and accurately itemizes all missed
12 meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages
14 earned by the employees.

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

26
27
28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES**

3 **(Cal. Lab. Code § 2802)**

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

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

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

9 An employer shall indemnify his or her employee for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her
11 duties, or of his or her obedience to the directions of the employer, even though
12 unlawful, unless the f obeying the directions, believed them to be unlawful.

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

105. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties

1 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
2 statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **EIGHTH CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES WHEN DUE**
6 **(Cal. Lab. Code §§201, 202, 203)**

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

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

12 107. Cal. Lab. Code § 200 provides that:

13 As used in this article: (a) "Wages" includes all amounts for labor performed by
14 employees of every description, whether the amount is fixed or ascertained by the
15 standard of time, task, piece, Commission basis, or other method of calculation. (b)
16 "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.

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

20 109. Cal. Lab. Code § 202 provides, in relevant part, that:

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

27 110. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-
28 CLASS Members' employment contract.

111. Cal. Lab. Code § 203 provides:

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

112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT have not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

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

115. 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

1 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
2 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

3 116. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, bring this Representative Action on behalf of the State of California with respect to herself
6 and all of DEFENDANTS' current and former California non-exempt employees
7 ("AGGRIEVED EMPLOYEES") during the time period between April 6, 2019 and the present
8 ("PAGA PERIOD").

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

17 118. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
20 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
21 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
22 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
23 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802 and the
24 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
25 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
26 Code Private Attorney General Act of 2004 as the representative of the State of California for the
27 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

28 119. 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, PLAINTIFF seeks penalties for those violations that

1 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
2 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
3 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
4 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
5 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
8 severally, as follows:

9
10 1. On behalf of the CALIFORNIA CLASS:

- 11 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
12 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 b. An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
15 c. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund
16 for restitution of the sums incidental to DEFENDANT’S violations due to
17 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
21 action pursuant to Cal. Code of Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages due PLAINTIFF and the other members of the CALIFORNIA LABOR
24 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
25 PERIOD plus interest thereon at the statutory rate;
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per member of the
2 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226; and

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

8 f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
10 costs of suit.

11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
13 Attorneys General Act of 2004; and

14 4. On all claims:

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

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

17 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code § 226, § 1198 and/or § 2802.

19 DATED: September__, 2020

20
21 By:_____

22 Shani O. Zakay

23 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: September __, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1