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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 ROGER RODRIGUEZ on behalf of himself
17 and on behalf of all persons similarly
18 situated,

19 Plaintiff,

20 v.

21 LIBERTY CONTAINER COMPANY, a
22 California Corporation (aka Key Container
23 Company); and DOES 1-50, Inclusive,

24 Defendants.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 09 2020

Sherri K. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

Case No: **20STCV13959**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

VIA FAX

1 Plaintiff ROGER RODRIGUEZ, an individual, (“PLAINTIFF”), on behalf of himself and
2 all other similarly situated current and former employees, allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant LIBERTY CONTAINER COMPANY (aka Key Container Company)
6 (“DEFENDANT” or “Defendant”) is a California Corporation and at all relevant times
7 mentioned herein conducted and continues to conduct substantial and regular business
8 throughout California.

9 2. DEFENDANT, manufactures corrugated and solid fiber boxes in the city of
10 South Gate in Los Angeles County.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from 2012 to
13 May of 2019. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid on an hourly basis.

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

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

1 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
2 CALIFORNIA CLASS who have been economically injured by DEFENDANT'S past and
3 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time to time,
26 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
27 paying them for all the time they were under DEFENDANT'S control. Specifically,
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended.
2 PLAINTIFF was often interrupted by work assignments during his breaks. Indeed there were
3 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF
4 and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and
5 overtime compensation by working without their time being accurately recorded and without
6 compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform
7 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
8 time worked is evidenced by DEFENDANT'S business records.

9 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
10 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for the actual time these employees worked each day,
12 including overtime hours. In effect, DEFENDANT implemented an unlawful rounding policy,
13 which resulted in, more often than not, underpayment of wages. As a result DEFENDANT was
14 able to and did in fact unlawfully, and unilaterally alter the time recorded in DEFENDANT's
15 timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to
16 avoid paying these employees the applicable overtime compensation for overtime worked and to
17 avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and other
18 CALIFORNIA CLASS Members, from time to time, forfeited time worked by working without
19 their time being accurately recorded and without compensation at the applicable overtime rates.

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

27 11. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
4 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period each workday in which these employees were required by
6 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
7 CLASS Members therefore forfeited meal breaks without additional compensation and in
8 accordance with DEFENDANT's strict corporate policy and practice

9 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
10 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
11 without being provided ten (10) minute rest periods. Further, these employees were denied their
12 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
15 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
16 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
17 remain on the premises and subject to DEFENDANT's control. If they were to leave
18 DEFENDANT's premises, PLAINTIFF and the CALIFORNIA CLASS Members were required
19 to clock out. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
20 with one hour wages in lieu thereof. As a result of their rigorous work schedules, and in
21 compliance with DEFENDANT's policy, PLAINTIFF and other CALIFORNIA CLASS
22 Members were periodically denied their proper rest periods by DEFENDANT and
23 DEFENDANT'S managers.

24 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
25 Members missed meal and rest breaks, or when they worked during what was supposed to be
26 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
28 among other things, the correct time and overtime worked, including, work performed in excess

1 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
2 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
3 shall furnish each of his or her employees with an accurate itemized wage statement in writing
4 showing, among other things, gross wages earned and all applicable hourly rates in effect during
5 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
6 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
7 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
8 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
9 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

20 15. Specifically as to PLAINTIFF, he was from time to time unable to take off duty
21 meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
22 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
23 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
24 provide PLAINTIFF with a second off-duty meal period each workday in which he was
25 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
26 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
27 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
28 failed to accurately display payments for missed meal and rest periods for certain pay periods in

1 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all
2 wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
3 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
4 \$75,000.

5 **JURISDICTION AND VENUE**

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

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

15 **THE CALIFORNIA CLASS**

16 18. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
17 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
18 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
19 individuals who are or previously were employed by DEFENDANT in California and classified
20 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
21 beginning four (4) years prior to the filing of the original complaint and ending on the date as
22 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
23 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
24 (\$5,000,000.00).

25 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
27 accordingly.
28

1 20. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
5 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of
6 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work,
7 required employees to perform this work and permitted or suffered to permit this work.

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

18 22. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
19 CLASS Members is impracticable.

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

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

1 provide mandatory meal and/or rest breaks to PLAINTIFFS and the
2 CALIFORNIA CLASS members;

- 3 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
4 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
5 company policies, practices and procedures that uniformly and systematically
6 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
7 CLASS for all time worked, including minimum wages owed and overtime
8 wages owed for work performed by these employees;

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

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

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

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

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

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

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the
27 CALIFORNIA CLASS sought does not relate exclusively to restitution
28 because through this claim PLAINTIFF seeks declaratory relief holding

1 that the DEFENDANT's policy and practices constitute unfair
2 competition, along with declaratory relief, injunctive relief, and incidental
3 equitable relief as may be necessary to prevent and remedy the conduct
4 declared to constitute unfair competition;

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

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

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

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

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

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

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

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

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

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

23 c. The members of the CALIFORNIA CLASS are so numerous that it is
24 impractical to bring all members of the CALIFORNIA CLASS before the Court;

25 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
26 obtain effective and economic legal redress unless the action is maintained as a
27 Class Action;

- 1 e. There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other
3 improprieties, and in obtaining adequate compensation for the damages and
4 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
5 CLASS;
- 6 f. There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the
8 CALIFORNIA CLASS for the injuries sustained;
- 9 g. DEFENDANT have acted or refused to act on grounds generally applicable to
10 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
11 with respect to the CALIFORNIA CLASS as a whole;
- 12 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
13 business records of DEFENDANT; 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 as to the members of the
17 CALIFORNIA CLASS.

18 27. DEFENDANT maintains records from which the Court can ascertain and
19 identify by job title each of DEFENDANT'S employees who as have been systematically,
20 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
22 any additional job titles of similarly situated employees when they have been identified.

23 **THE CALIFORNIA LABOR SUB-CLASS**

24 28. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh,
25 causes of Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
27 SUB-CLASS") at any time during the period three (3) years prior to the filing of the original
28 complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR

1 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
2 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
3 dollars (\$5,000,000.00).

4 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
8 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though
10 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
11 permitted or suffered to permit this overtime work. DEFENDANT has uniformly denied these
12 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in
13 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
14 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
15 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 26 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
28

missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- d. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- e. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- f. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- 1 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing all accurate and applicable overtime rates in effect
4 during the pay period and the corresponding amount of time worked at each
5 overtime rate by the employee;
- 6 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
7 employee is discharged or quits from employment, the employer must pay the
8 employee all wages due without abatement, by failing to tender full payment
9 and/or restitution of wages owed or in the manner required by California law to
10 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
11 their employment.

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

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

1 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
2 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
3 misconduct engaged in by DEFENDANT; and

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

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

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

CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

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

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

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

23 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
24 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
25 CLASS before the Court;

26 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
27 not be able to obtain effective and economic legal redress unless the action is
28 maintained as a Class Action;

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

21 **FIRST CAUSE OF ACTION**

22 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

1 38. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

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

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

11 40. 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 Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which this
15 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 41. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
19 unfair in that these practices violated public policy, were immoral, unethical, oppressive
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 42. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
25 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
26 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
27 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
28 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and

1 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
2 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
3 Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

16 46. PLAINTIFF further demands on behalf of himself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
18 was not timely provided as required by law.

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

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

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

49. 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 have 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.

50. 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.

51. 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 are 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)**

52. 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.

53. 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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
3 Members.

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

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

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

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

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

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

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

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

4 62. 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-
6 CLASS for the true 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
9 according to proof at trial.

10 63. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
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,
14 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
15 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
16 correct minimum wages for their time worked.

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

25 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid 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 wage
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 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.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

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

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

66. 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.

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

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

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

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

1 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
3 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

11 73. In committing these violations of the California Labor Code, DEFENDANT acted
12 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
13 the California Labor Code, the Industrial Welfare Commission requirements and other
14 applicable laws and regulations.

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

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

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

 77. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in

1 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
2 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
4 to accurately record and pay using the applicable overtime rate as evidenced by
5 DEFENDANT's business records and witnessed by employees.

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

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

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

27 81. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
interest, statutory costs, as well as the assessment of any statutory penalties against
DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable

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

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

6 85. 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 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

28 88. DEFENDANT further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
2 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
3 each workday that rest period was not provided.

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

7
8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
10 **(Cal. Lab. Code § 226)**

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

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

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

- 18 a. Gross wages earned;
- 19 b. Total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of
21 overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission;
- 23 c. The number of piece rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis;
- 25 d. All deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item;
- 27 e. Net wages earned;
- 28 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
3 an employee identification number other than a social security number may be
4 shown 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 92. When DEFENDANT did not accurately record PLAINTIFF's and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT
10 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
11 complete and accurate wage statements which failed to show, among other things, missed meal
12 and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA
13 CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
14 or her employees with an accurate itemized wage statement in writing showing, among other
15 things, gross wages earned and all applicable hourly rates in effect during the pay period and the
16 corresponding amount of time worked at each hourly rate. Aside from the violations listed
17 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
18 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
19 from time to time DEFENDANT provided PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

21 93. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
22 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct rates for the overtime worked and the amount of employment
25 taxes which were not properly paid to state and federal tax authorities. These damages are
26 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
28 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
2 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
3 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

4
5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
4 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
5 pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for minimum wages, reporting time wages, and other compensation due
8 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
10 plus interest thereon at the statutory rate;
- 11 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
14 which a violation occurs and one hundred dollars (\$100) per member of the
15 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226; and
- 18 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
19 CLASS as a penalty from the due date thereof at the same rate until paid or until
20 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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