

# SUMMONS (CITACION JUDICIAL)

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

UNITED LANDSCAPE RESOURCE, INC. a California Corporation  
(dba Botanica Landscapes); and DOES 1-50, Inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID P. KARFS on behalf of himself and on behalf of all persons  
similarly situated

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

Electronically Filed  
June 8, 2020  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER  
CLERK OF THE COURT  
By: Brenda Johnson, Deputy

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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/](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://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):

Sutter County Superior Courthouse  
1175 Civic Center Blvd  
Yuba City, CA 95993

CASE NUMBER: CVCS20-0000907  
(Número del Caso):

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) 255-9047 Fax: (858) 404-9203

Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE: 06/08/2020  
(Fecha)

Clerk, by B. Johnson, Deputy  
(Secretario) (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: <input type="checkbox"/> CCP 416.10 (corporation)         | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |                                                         |
4. ☐ by personal delivery on (date):

[SEAL]



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Electronically Filed  
June 8, 2020  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER  
CLERK OF THE COURT  
By: Brenda Johnson, Deputy

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Attorneys for Plaintiff

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

DAVID P. KARFS on behalf of himself and  
on behalf of all persons similarly situated,

Plaintiff,

v.

UNITED LANDSCAPE RESOURCE, INC.  
a California Corporation (dba Botanica  
Landscapes); and DOES 1-50, Inclusive,

Defendants.

Case No: CVCS20-0000907

**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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq*.

**DEMAND FOR A JURY TRIAL**

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

**PRELIMINARY ALLEGATIONS**

1. Defendant UNITED LANDSCAPE RESOURCE, INC. (“DEFENDANT” or “Defendant”) is a corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT, doing business as “Botanica Landscapes,” is a full-service landscape company, providing landscape construction and maintenance in Sutter County and surrounding areas.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from October 2017 to May 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid on an hourly basis.

4. PLAINTIFF bring this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of the Complaint 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).

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained and continue to retain wages due 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. As a result DEFENDANT was able to and did in fact unlawfully, and  
13 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and  
14 the members of the CALIFORNIA CLASS in order to avoid paying these employees the  
15 applicable overtime compensation for overtime worked and to avoid paying these employees for  
16 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from  
17 time to time, forfeited time worked by working without their time being accurately recorded and  
18 without compensation at the applicable overtime rates.

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

26         11. As a result of their rigorous work schedules, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal  
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT  
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,  
3 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
4 second off-duty meal period each workday in which these employees were required by  
5 DEFENDANT to work ten (10) hours of work. When they did have an opportunity to take their  
6 meal breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on  
7 the premises and subject to DEFENDANT's control. PLAINTIFF and the other CALIFORNIA  
8 CLASS Members therefore forfeited meal breaks without additional compensation and in  
9 accordance with DEFENDANT's strict corporate policy and practice

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

23 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS  
24 Members missed meal and rest breaks, or when they worked during what was supposed to be  
25 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,  
27 among other things, the correct time and overtime worked, including, work performed in excess  
28 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty

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

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

20       15. In the course of their employment, PLAINTIFF and other CALIFORNIA  
21 CLASS Members as a business expense, were required by DEFENDANT to use their own  
22 personal cellular phones as a result of and in furtherance of their job duties as employees for  
23 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
24 associated with the use of their personal cellular phones for DEFENDANT'S benefit.  
25 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
26 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
27 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
28 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not

1 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
2 benefit of DEFENDANT.

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

13 17. Specifically as to PLAINTIFF’S pay, he was from time to time unable to take off  
14 duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
15 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
17 provide PLAINTIFF with a second off-duty meal period each workday in which he was  
18 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal  
19 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict  
20 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that  
21 failed to accurately display payments for missed meal and rest periods for certain pay periods in  
22 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS  
23 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.  
24 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
25 \$75,000.

26 **JURISDICTION AND VENUE**

27 18. This Court has jurisdiction over this Action pursuant to California Code of Civil  
28 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

1 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees  
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

8 **THE CALIFORNIA CLASS**

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

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

21 22. DEFENDANT, as a matter of company policy, practice and procedure, and in  
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
24 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly  
25 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work,  
27 required employees to perform this work and permitted or suffered to permit this work.  
28

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

11           24.     The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
12 CLASS Members is impracticable.

13           25.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
14 California law by:

- 15           a.     Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
16                 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
17                 company policies, practices and procedures that failed to pay all wages due the  
18                 CALIFORNIA CLASS for all time worked;
- 19           b.     Committing an act of unfair competition in violation of the California Unfair  
20                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
21                 provide mandatory meal and/or rest breaks to PLAINTIFFS and the  
22                 CALIFORNIA CLASS members;
- 23           c.     Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
24                 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
25                 company policies, practices and procedures that uniformly and systematically  
26                 failed to record and pay PLAINTIFF and other members of the CALIFORNIA  
27                 CLASS for all time worked, including minimum wages owed and overtime  
28                 wages owed for work performed by these employees; and

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.  
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA  
4 CLASS members with necessary expenses incurred in the discharge of their job  
5 duties.

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

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

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
13 uniformly to every member of the CALIFORNIA CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of each  
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
16 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid  
17 on an hourly basis who was subjected to the DEFENDANT’S deceptive practice  
18 and policy which failed to provide the legally required meal and rest periods to  
19 the CALIFORNIA CLASS and thereby systematically underpaid compensation  
20 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
21 injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the  
22 members of the CALIFORNIA CLASS were and are similarly or identically  
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
24 misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect  
26 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
27 competent and experienced in Class Action litigation. There are no material  
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.  
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
3 CALIFORNIA CLASS Members.

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

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

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

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

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

22 i. With respect to the First Cause of Action, the final relief on behalf of the  
23 CALIFORNIA CLASS sought does not relate exclusively to restitution  
24 because through this claim PLAINTIFF seeks declaratory relief holding  
25 that the DEFENDANT's policy and practices constitute unfair  
26 competition, along with declaratory relief, injunctive relief, and incidental  
27 equitable relief as may be necessary to prevent and remedy the conduct  
28 declared to constitute unfair competition;

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

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

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

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

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

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

1 subsequent employer, the Class Action is the only means to assert their  
2 claims through a representative; and

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

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

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

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

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

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

24 e. There is a community of interest in obtaining appropriate legal and equitable  
25 relief for the acts of unfair competition, statutory violations and other  
26 improprieties, and in obtaining adequate compensation for the damages and  
27 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
28 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  
5 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
6 with 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 29. DEFENDANT maintains records from which the Court can ascertain and  
14 identify by job title each of DEFENDANTS' employees who as have been systematically,  
15 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and  
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include  
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 30. 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 classified as non-exempt employees (the "CALIFORNIA LABOR  
22 SUB-CLASS") at any time during the period three (3) years prior to the filing of the original  
23 complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR  
24 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy  
25 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million  
26 dollars (\$5,000,000.00).

27 31. 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  
3 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA  
4 LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though  
5 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and  
6 permitted or suffered to permit this overtime work. DEFENDANT has uniformly denied these  
7 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in  
8 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling  
9 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the  
10 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 21 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
22 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
23 missed meal and rest breaks in violation of the California Labor Code and  
24 California regulations and the applicable California Wage Order;
- 25 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
26 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
27 thirty (30) minute meal breaks and rest periods;
- 28

- 1 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 d. Whether DEFENDANT have 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 35. 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
- 12 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
- 13 wages due for overtime worked, for which DEFENDANTS are liable pursuant to
- 14 Cal. 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 DEFENDANTS are liable pursuant to
- 18 Cal. Lab. Code §§ 1194 and 1197;
- 19 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
- 20 and the other members of the CALIFORNIA CLASS with all legally required
- 21 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
- 22 rest breaks;
- 23 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 24 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 25 statement in writing showing all accurate and applicable overtime rates in effect
- 26 during the pay period and the corresponding amount of time worked at each
- 27 overtime rate by the employee;
- 28

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

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

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

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  
5 counsel who are competent and experienced in Class Action litigation. There are  
6 no material conflicts between the claims of the representative PLAINTIFF and  
7 the 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 37. 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  
24 substantially 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 DEFENDANTS

1 uniformly failed to pay all wages due for all time worked by the members of the  
2 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  
5 violations of California Law as listed above, and predominate over any question  
6 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a  
7 Class Action is superior to other available methods for the fair and efficient  
8 adjudication of the controversy, including consideration of:

9 i. The interests of the members of the CALIFORNIA LABOR SUB-  
10 CLASS in individually controlling the prosecution or defense of separate  
11 actions in that the substantial expense of individual actions will be  
12 avoided to recover the relatively small amount of economic losses  
13 sustained by the individual CALIFORNIA LABOR SUB-CLASS  
14 Members when compared to the substantial expense and burden of  
15 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 LABOR SUB-CLASS, which  
20 would establish incompatible standards of conduct for the  
21 DEFENDANTS; and/or,

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

27 iii. In the context of wage litigation because a substantial number of  
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid

1                   asserting their legal rights out of fear of retaliation by DEFENDANTS,  
2                   which may adversely affect an individual's job with DEFENDANTS or  
3                   with a subsequent employer, the Class Action is the only means to assert  
4                   their claims through a representative; and,

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

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

- 12               a. The questions of law and fact common to the CALIFORNIA LABOR SUB-  
13               CLASS predominate over any question affecting only individual CALIFORNIA  
14               LABOR SUB-CLASS Members;
- 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 LABOR SUB-  
17               CLASS because in the context of employment litigation a substantial number of  
18               individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
19               their rights individually out of fear of retaliation or adverse impact on their  
20               employment;
- 21               c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
22               it is impractical to bring all members of the CALIFORNIA LABOR SUB-  
23               CLASS before the Court;
- 24               d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
25               not be able to obtain effective and economic legal redress unless the action is  
26               maintained as a Class Action;
- 27               e. There is a community of interest in obtaining appropriate legal and equitable  
28               relief for the acts of unfair competition, statutory violations and other

improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

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

**FIRST CAUSE OF ACTION**

**UNLAWFUL BUSINESS PRACTICES**

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

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

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

40. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

5           Any person who engages, has engaged, or proposes to engage in unfair competition may  
6 be enjoined in any court of competent jurisdiction. The court may make such orders or  
7 judgments, including the appointment of a receiver, as may be necessary to prevent the  
8 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).

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

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

22           44. By the conduct alleged herein, DEFENDANT’S practices were deceptive and  
23 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and  
24 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
25 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a  
26 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and  
27 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,  
28

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

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

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

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

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

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

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

53. 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.

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

54. 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.

55. 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

1 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
2 Members.

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

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

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

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

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

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

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

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

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

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

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

67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid 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 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)**

68. 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.

69. 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.

70. 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.

71. 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.

72. 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           73. 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           74. 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           75. 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           76. 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           77. 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           78. 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.

          79. 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 80. 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 81. 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 82. 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 83. 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**  
12 **Defendants)**

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

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

1           86. 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           87. 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                           **FIFTH CAUSE OF ACTION**

10                           **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

14           88. 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           89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
18 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
19 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
20 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten  
21 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second  
22 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or  
23 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not  
24 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically  
26 denied their proper rest periods by DEFENDANT and DEFENDANT’s managers.

27           90. DEFENDANT further violated California Labor Code §§ 226.7 and the  
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR  
SUB-CLASS Members who were not provided a rest period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for  
2 each workday that rest period was not provided.

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

6  
7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

9 **(Cal. Lab. Code §§ 2802)**

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

12 92. 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 93. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

21 94. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
22 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
24 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
25 CLASS members for expenses which included, but were not limited to, costs related to using  
26 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.  
27 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
28 DEFENDANT to use their personal cell phones to respond to work related issues.  
DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their

1 personal cellular phones for DEFENDANT within the course and scope of their employment for  
2 DEFENDANT. These expenses were necessary to complete their principal job duties.  
3 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.  
4 Although these expenses were necessary expenses incurred by PLAINTIFF and the  
5 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and  
6 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these  
7 expenses as an employer is required to do under the laws and regulations of California.

8 95. PLAINTIFF therefore demand reimbursement for expenditures or losses  
9 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
10 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
11 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12  
13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**  
15 **(Cal. Lab. Code § 226)**

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

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

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

- 23 a. Gross wages earned;
- 24 b. Total hours worked by the employee, except for any employee whose  
25 compensation is solely based on a salary and who is exempt from payment of  
26 overtime under subdivision (a) of Section 515 or any applicable order of the  
27 Industrial Welfare Commission;
- 28 c. The number of piece rate units earned and any applicable piece rate if the  
employee is paid on a piece-rate basis;

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

98. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, missed meal and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

99. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are  
2 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA  
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the  
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according  
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for  
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8  
9 **EIGHTH CAUSE OF ACTION**  
10 **FAILURE TO PAY WAGES WHEN DUE**  
11 **(Cal. Lab. Code §§201, 202, 203)**

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

14 100. 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.

17 101. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

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

7 105. Cal. Lab. Code § 203 provides:

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

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

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

## 22 **NINTH CAUSE OF ACTION**

### 23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

24 **[Cal. Lab. Code §§ 2698 et seq.]**

25 **(Alleged by PLAINTIFF against all Defendant)**

26 108. PLAINTIFF reallege and incorporates by this reference, as though fully set forth  
27 herein, the prior paragraphs of this Complaint.

28 109. 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

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a  
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In  
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to  
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for  
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be  
6 subject to arbitration.

7 110. PLAINTIFF, and such persons that may be added from time to time who satisfy  
8 the requirements and exhaust the administrative procedures under the Private Attorney General  
9 Act, bring this Representative Action on behalf of the State of California with respect to herself  
10 and all individuals who are or previously were employed by DEFENDANT and classified as  
11 non-exempt employees in California during the time period of March 31, 2019 until the present  
12 (the "AGGRIEVED EMPLOYEES").

13 111. On March 31, 2020, PLAINTIFF gave written notice by certified mail to the  
14 Labor and Workforce Development Agency (the "Agency") and the employer of the  
15 specific provisions of this code alleged to have been violated as required by Labor Code §  
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The  
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.  
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil  
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect  
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 112. The policies, acts and practices heretofore described were and are an unlawful  
22 business act or practice because Defendant (a) failed to pay PLAINTIFF and other  
23 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide  
24 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)  
25 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in  
26 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not  
27 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197,  
28 1197.1, 1198 1199 & 2802, and the applicable Industrial Wage Order(s), and thereby gives rise

1 to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil  
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
4 the other AGGRIEVED EMPLOYEES.

5  
6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

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

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

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
22 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
23 action pursuant to Cal. Code of Civ. Proc. § 382;  
24 b. Compensatory damages, according to proof at trial, including compensatory  
25 damages for minimum wages, reporting time wages, unreimbursed expenses, and  
26 other compensation due to PLAINTIFF and the other members of the  
27 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA  
28 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 4 which a violation occurs and one hundred dollars (\$100) per member of the
- 5 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 7 an award of costs for violation of Cal. Lab. Code § 226; and
- 8 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
- 9 CLASS as a penalty from the due date thereof at the same rate until paid or until
- 10 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 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;
- 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
- 18 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
- 19 and/or §1197.
- 20

21 DATED: June 8, 2020

22  
23 **ZAKAY LAW GROUP, APLC**

24  
25  
26 By: 

27 Shani O. Zakay  
28 Attorney for Plaintiffs

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**DEMAND FOR A JURY TRIAL**

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

DATED: June 8, 2020

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiff

# EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

**March 31, 2020**

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

***Via Online Submission***

**UNITED LANDSCAPE RESOURCE, INC**  
c/o BILL LUCICH  
5411 COLUSA HWY  
YUBA CITY CA 95993.

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

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

Plaintiff was employed by Defendant in California from October 2017 to May 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

This electronic document is the official court record (GC68150)

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

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

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

Respectfully,



Shani O. Zakay  
Attorney at Law

**ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
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**JCL LAW FIRM, APC**  
Jean-Claude Lapuyade (State Bar #248676)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619)599-8292  
Facsimile: (619) 599-8291

Attorneys for Plaintiff

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

DAVID P. KARFS on behalf of himself and  
on behalf of all persons similarly situated,

Plaintiff,

v.

UNITED LANDSCAPE RESOURCE, INC.  
a California Corporation (dba Botanica  
Landscapes); and DOES 1-50, Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and

**DEMAND FOR A JURY TRIAL**

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

**PRELIMINARY ALLEGATIONS**

1. Defendant UNITED LANDSCAPE RESOURCE, INC. (“DEFENDANT” or “Defendant”) is a corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT, doing business as “Botanica Landscapes,” is a full-service landscape company, providing landscape construction and maintenance in Sutter County and surrounding areas.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from October 2017 to May 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid on an hourly basis.

4. PLAINTIFF bring this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of the Complaint 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).

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANTS retained and continue to retain wages due 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. As a result DEFENDANT was able to and did in fact unlawfully, and  
13 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and  
14 the members of the CALIFORNIA CLASS in order to avoid paying these employees the  
15 applicable overtime compensation for overtime worked and to avoid paying these employees for  
16 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from  
17 time to time, forfeited time worked by working without their time being accurately recorded and  
18 without compensation at the applicable overtime rates.

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

26         11. As a result of their rigorous work schedules, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal  
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT  
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,  
3 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
4 second off-duty meal period each workday in which these employees were required by  
5 DEFENDANT to work ten (10) hours of work. When they did have an opportunity to take their  
6 meal breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to remain on  
7 the premises and subject to DEFENDANT's control. PLAINTIFF and the other CALIFORNIA  
8 CLASS Members therefore forfeited meal breaks without additional compensation and in  
9 accordance with DEFENDANT's strict corporate policy and practice

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

23 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS  
24 Members missed meal and rest breaks, or when they worked during what was supposed to be  
25 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,  
27 among other things, the correct time and overtime worked, including, work performed in excess  
28 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty

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

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

20 15. In the course of their employment, PLAINTIFF and other CALIFORNIA  
21 CLASS Members as a business expense, were required by DEFENDANT to use their own  
22 personal cellular phones as a result of and in furtherance of their job duties as employees for  
23 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
24 associated with the use of their personal cellular phones for DEFENDANT'S benefit.  
25 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
26 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the  
27 course of their employment with DEFENDANT the PLAINTIFF and other members of the  
28 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not

1 limited to, costs related to the use of their personal cellular phones all on behalf of and for the  
2 benefit of DEFENDANT.

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

13 17. PLAINTIFF further alleges that the station counters in DEFENDANT’s hotel  
14 provides ample space behind each counter area to allow for the presence and use of a stool or  
15 seat by DEFENDANT’s employees’ during the performance of their work duties.  
16 DEFENDANT’s employees’ working at DEFENDANT’s hotel spend a very substantial portion,  
17 and, in many workdays, the vast majority of their working time behind these counters. The  
18 nature of the position can reasonably be accomplished while using a seat/stool.

19 18. In violation of the applicable sections of the California Labor Code and the  
20 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,  
21 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly  
22 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable  
23 seating when the nature of these employees’ work reasonably permitted sitting.

24 19. Specifically as to PLAINTIFF’S pay, he was from time to time unable to take off  
25 duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
26 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
28 provide PLAINTIFF with a second off-duty meal period each workday in which he was

1 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal  
2 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict  
3 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that  
4 failed to accurately display payments for missed meal and rest periods for certain pay periods in  
5 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFFS  
6 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.  
7 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
8 \$75,000.

9 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

20 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
21 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
22 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
23 individuals who are or previously were employed by DEFENDANT in California and classified  
24 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period  
25 beginning four (4) years prior to the filing of the original complaint and ending on the date as  
26 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
27 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
28 (\$5,000,000.00).

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

4           24. 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 systematically failed to correctly  
8 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of  
9 the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work,  
10 required employees to perform this work and permitted or suffered to permit this work.

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

21           26. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
22 CLASS Members is impracticable.

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

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

- 1           b. Committing an act of unfair competition in violation of the California Unfair
- 2           Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
- 3           provide mandatory meal and/or rest breaks to PLAINTIFFS and the
- 4           CALIFORNIA CLASS members;
- 5           c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
- 6           §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
- 7           company policies, practices and procedures that uniformly and systematically
- 8           failed to record and pay PLAINTIFF and other members of the CALIFORNIA
- 9           CLASS for all time worked, including minimum wages owed and overtime
- 10          wages owed for work performed by these employees; and
- 11          d. Committing an act of unfair competition in violation of the California Unfair
- 12          Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
- 13          Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
- 14          CLASS members with necessary expenses incurred in the discharge of their job
- 15          duties.

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

- 18           a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 19           joinder of all such persons is impracticable and the disposition of their claims as
- 20           a class will benefit the parties and the Court;
- 21           b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 22           raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 23           uniformly to every member of the CALIFORNIA CLASS;
- 24           c. The claims of the representative PLAINTIFF are typical of the claims of each
- 25           member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
- 26           of the CALIFORNIA CLASS, were classified as a non- exempt employee paid
- 27           on an hourly basis who was subjected to the DEFENDANT’S deceptive practice
- 28           and policy which failed to provide the legally required meal and rest periods to

1 the CALIFORNIA CLASS and thereby systematically underpaid compensation  
2 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
3 injury as a result of DEFENDANT'S employment practices. PLAINTIFF and the  
4 members of the CALIFORNIA CLASS were and are similarly or identically  
5 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
6 misconduct engaged in by DEFENDANT; and

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

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

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

1 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
2 DEFENDANT uniformly failed to pay all wages due for all time worked by the  
3 members of the CALIFORNIA CLASS as required by law;

- 4 i. With respect to the First Cause of Action, the final relief on behalf of the  
5 CALIFORNIA CLASS sought does not relate exclusively to restitution  
6 because through this claim PLAINTIFF seeks declaratory relief holding  
7 that the DEFENDANT's policy and practices constitute unfair  
8 competition, along with declaratory relief, injunctive relief, and incidental  
9 equitable relief as may be necessary to prevent and remedy the conduct  
10 declared to constitute unfair competition;
- 11 c. Common questions of law and fact exist as to the members of the CALIFORNIA  
12 CLASS, with respect to the practices and violations of California law as listed  
13 above, and predominate over any question affecting only individual  
14 CALIFORNIA CLASS Members, and a Class Action is superior to other  
15 available methods for the fair and efficient adjudication of the controversy,  
16 including consideration of:
- 17 i. The interests of the members of the CALIFORNIA CLASS in  
18 individually controlling the prosecution or defense of separate actions in  
19 that the substantial expense of individual actions will be avoided to  
20 recover the relatively small amount of economic losses sustained by the  
21 individual CALIFORNIA CLASS Members when compared to the  
22 substantial expense and burden of individual prosecution of this  
23 litigation;
- 24 ii. Class certification will obviate the need for unduly duplicative litigation  
25 that would create the risk of:
- 26 1. Inconsistent or varying adjudications with respect to individual  
27 members of the CALIFORNIA CLASS, which would establish  
28 incompatible standards of conduct for the DEFENDANT; and/or;

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

30. The 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

23 31. DEFENDANT maintains records from which the Court can ascertain and

24 identify by job title each of DEFENDANTS' employees who as have been systematically,

25 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and

26 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include

27 any additional job titles of similarly situated employees when they have been identified.

28

**THE CALIFORNIA LABOR SUB-CLASS**

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

33. 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 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and other wages and premiums owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

- 22           a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay  
23           PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all  
24           wages due for overtime worked, for which DEFENDANTS are liable pursuant to  
25           Cal. Lab. Code § 1194;
- 26           b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
27           pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS  
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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;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-

CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish

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- incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
- ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that 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                               1. Inconsistent or varying adjudications with respect to individual
- 2                               members of the CALIFORNIA LABOR SUB-CLASS, which
- 3                               would establish incompatible standards of conduct for the
- 4                               DEFENDANTS; and/or,
- 5                               2. Adjudications with respect to individual members of the
- 6                               CALIFORNIA LABOR SUB-CLASS would as a practical matter
- 7                               be dispositive of the interests of the other members not parties to
- 8                               the adjudication or substantially impair or impede their ability to
- 9                               protect their interests;
- 10                              iii. In the context of wage litigation because a substantial number of
- 11                              individual CALIFORNIA LABOR SUB-CLASS Members will avoid
- 12                              asserting their legal rights out of fear of retaliation by DEFENDANTS,
- 13                              which may adversely affect an individual’s job with DEFENDANTS or
- 14                              with a subsequent employer, the Class Action is the only means to assert
- 15                              their claims through a representative; and,
- 16                              iv. A class action is superior to other available methods for the fair and
- 17                              efficient adjudication of this litigation because class treatment will
- 18                              obviate the need for unduly and unnecessary duplicative litigation that is
- 19                              likely to result in the absence of certification of this action pursuant to
- 20                              Cal. Code of Civ. Proc. § 382.
- 21                              40. This Court should permit this action to be maintained as a Class Action pursuant
- 22                              to Cal. Code of Civ. Proc. § 382 because:
- 23                              a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
- 24                              CLASS predominate over any question affecting only individual CALIFORNIA
- 25                              LABOR SUB-CLASS Members;
- 26                              b. A Class Action is superior to any other available method for the fair and efficient
- 27                              adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
- 28                              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 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

### **FIRST CAUSE OF ACTION**

#### **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the 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).

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

45. By the conduct alleged herein, DEFENDANT’S practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or  
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
4 withheld.

5 46. By the conduct alleged herein, DEFENDANT’S practices were deceptive and  
6 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and  
7 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
8 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a  
9 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and  
10 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,  
11 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &  
12 Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

25 50. PLAINTIFF further demands on behalf of himself and on behalf of each  
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
27 was not timely provided as required by law.  
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1           51. By and through the unlawful and unfair business practices described herein,  
2 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them  
4 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these  
5 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly  
6 compete against competitors who comply with the law.

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

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

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

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

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

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

56. 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.

57. 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.

58. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

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

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
27 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime  
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1 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)  
2 hours in any workweek.

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

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

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

13 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for  
15 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

22 77. In committing these violations of the California Labor Code, DEFENDANT acted  
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
24 the California Labor Code, the Industrial Welfare Commission requirements and other  
25 applicable laws and regulations.

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

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

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

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
2 applicable overtime rate.

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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**FIFTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REQUIRED REST PERIODS**

**(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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**SIXTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

**(Cal. Lab. Code §§ 2802)**

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

94. 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.

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

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

96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and

1 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these  
2 expenses as an employer is required to do under the laws and regulations of California.

3 97. PLAINTIFF therefore demand reimbursement for expenditures or losses  
4 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of  
5 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with  
6 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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

16 99. 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;

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

100. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, missed meal and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

101. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the 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).

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5 **EIGHTH 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)**

10 102. 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.

13 103. 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.

20 104. 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."

23 105. 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.

106. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

107. 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.

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

109. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demand 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.

**PRAYER FOR RELIEF**

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

1. On behalf of the CALIFORNIA CLASS:
  - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
  - c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
  - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund

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for restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
  - b. Such other and further relief as the Court deems just and equitable; and
  - c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: \_\_\_\_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiffs

**DEMAND FOR A JURY TRIAL**

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

DATED: \_\_\_\_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for Plaintiff