

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SCOTT'S SACRAMENTO RIVER, INC., a California corporation; and
DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

DIONYSIOS YURI SHALLAN, an individual, on behalf of himself and
on behalf of all persons similarly situated,

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

FILED/ENDORSED

NOV 16 2020

By: K. Johnson
Deputy Clerk

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Sacramento Superior Court, Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER:

(Número del Caso)

34-2020-00288630

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):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha)

NOV 16 2020

Clerk, by

(Secretario)

K. JOHNSON

, Deputy

(Adjunto)

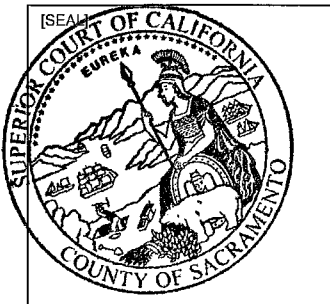
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

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

NOTICE TO THE PERSON SERVED: You are served

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

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



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2 Shani O. Zakay (State Bar #277924)
3 5850 Oberlin Drive Suite 230A
4 San Diego, CA 92121
5 Telephone: (619) 255-9047
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13 Attorneys for Plaintiff

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

16 DIONYSIOS YURI SHALLAN, an
17 individual, on behalf of himself and on
18 behalf of all persons similarly situated,

19 Plaintiff,

20 v.

21 SCOTT'S SACRAMENTO RIVER, INC., a
22 California corporation; and DOES 1 through
23 50, inclusive,

24 Defendants.

FILED/ENDORSED

NOV 05 2020

By: K. Johnson
Deputy Clerk

Case No: **34-2020-00288630**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff DIONYSIOS YURI SHALLAN (“PLAINTIFF”), individuals, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. Defendant SCOTT'S SACRAMENTO RIVER, INC. (“DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT manages and operates a restaurant and banquet hall.

10 3. PLAINTIFF has been employed by DEFENDANT since 2014 and has been at all
11 times classified by DEFENDANTS as a non-exempt employee, paid in whole or in part on an
12 hourly basis.

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

19 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
22 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
23 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
24 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
25 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
26 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 **THE CONDUCT**

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

1 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF and
2 CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
3 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and
5 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
6 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As a
7 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
8 overtime wage compensation, and meal break wages, by working without their time being
9 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
11 time worked, is evidenced by DEFENDANT's business records. As a result, the PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
15 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were not
16 being paid their correct minimum wage and overtime compensation.

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

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

1 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
2 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
3 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without the correct meal premium compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

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

18 12. When PLAINTIFF and other CALIFORNIA CLASS Members worked missed
19 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, the correct overtime rate for overtime worked, including, work performed in
22 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
23 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
24 employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
26 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
27 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

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

3 13. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
4 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
5 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
6 to the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
7 18%-22% service charges to its food and beverage banquet bills. These service charges were in
8 the form of automatic charges which customers are required to pay, and which reasonably appear
9 to be gratuities for the service staff. It is typical and customary in the hospitality industry that
10 establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill.
11 Thus, when customers have paid these charges, it is reasonable for them to have believed they
12 were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted
13 to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-
14 22% are paid for food and beverage service, customers have paid these charges reasonably
15 believing they were remitted to the service staff. However, DEFENDANT has not remitted the
16 total proceeds of these gratuities to the non-managerial employees who serve the food and
17 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion or the
18 entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-
19 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
20 received the total proceeds of the gratuities, to which they are entitled to under California law

21 14. DEFENDANT is generally in the business of owning and operating a restaurant
22 and a banquet hall. In addition, DEFENDANT also provides banquet services to large groups,
23 such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
25 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA
26 CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were
27 kept by DEFENDANT and their agents who were not in the chain of service from which the
28 gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any

1 gratuities kept by DEFENDANT were illegal and in violation of California law because
2 PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
3 service for to whom the gratuity should have been paid.

4 15. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
6 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
7 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
8 “gratuity” as including any money that has been paid or given or left for an employee by a patron
9 of a business over and above the actual amount due the business for services rendered or for
10 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
11 to keep accurate records of all gratuities they receive, directly or indirectly.

12 16. Although tip pooling is not expressly prohibited by the Labor Code, employees
13 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
14 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
15 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
16 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
17 A148513 (Court of Appeals of California, First District, Division Two.).

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
22 calculate and record the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
23 Members. The proper calculation of these employees’ overtime is the DEFENDANT’s burden.
24 As a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
25 DEFENDANT failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

1 18. Specifically as to PLAINTIFF pay, from time to time, PLAINTIFF would clock
2 out during what was supposed to be his off-duty meal breaks, as well as at the end of his shifts,
3 and continue to perform work as required by DEFENDANT. As a result, DEFENDANT failed
4 to pay PLAINTIFF all minimum and overtime wages due to them for all time spent under
5 DEFENDANT's control. PLAINTIFF was also from time to time unable to take off duty meal
6 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period from time to time in which they were required by DEFENDANT to
10 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without the
11 correct premium compensation and in accordance with DEFENDANT's strict corporate policy
12 and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
13 display PLAINTIFF's correct overtime pay and payments for missed meal and rest periods for
14 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully
15 paid PLAINTIFF the compensation still owed to him or any penalty wages owed to him under
16 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
17 the sum or value of \$75,000.

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

1 20. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members, as a business expense, were required by DEFENDANTS to use personal cellular phones
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
5 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed
7 business expenses which included, but were not limited to, costs related to the use of their personal
8 cellular phones all on behalf of and for the benefit of DEFENDANT. The amount in controversy
9 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

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

18 **THE CALIFORNIA CLASS**

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

1 24. 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 25. The California Legislature has commanded that “all wages... ..earned by any
5 person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
8 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
9 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
10 however, is statutorily authorized to “establish exemptions from the requirement that an overtime
11 rate of compensation be paid... ..for executive, administrative, and professional employees,
12 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
13 exemption, [and] customarily and regularly exercises discretion and independent judgment in
14 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
15 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
16 exemption from the above requirements.

17 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 overtime compensation for overtime worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member is paid for all overtime worked. DEFENDANT, however, as a matter of uniform
26 and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid overtime for all overtime worked. This common business

1 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
2 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

4 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked, as required by California Labor Code §§ 204 and 510, *et seq.*

7 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
13 deceptively having in place company policies, practices and procedures
14 that uniformly and systematically failed to record and pay PLAINTIFF and
15 the other members of the CALIFORNIA CLASS for all time worked,
16 including minimum wages owed and overtime wages owed for work
17 performed by these employees;
- 18 b. Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members; and
- 22 c. Committing an act of unfair competition in violation of the UCL, by failing
23 to provide the PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with all gratuities in violation of Cal. Lab. Code Section 351;

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons 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 CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANT and were and are non-exempt employees paid on an hourly basis who have been subjected to the DEFENDANT's practice and policy which fails to pay overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically underpays overtime compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA 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 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 CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

32. 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:

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or
- 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as
17 a whole in that DEFENDANT uniformly failed to pay all wages due.
18 Including the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;
28

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

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

14 d. 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
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or

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

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

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

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

8 33. This 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
12 CLASS Members because the DEFENDANT's employment practices are
13 uniform and systematically applied with respect to the CALIFORNIA
14 CLASS;
- 15 b. A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 d. PLAINTIFF and the other CALIFORNIA CLASS Members, will not be
25 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
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

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

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

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
23 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
24 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT failed to pay overtime compensation for
7 the overtime worked, even though DEFENDANT enjoyed the benefit of this work, required
8 employees to perform this work and permitted or suffered to permit this work. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

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

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

19 39. 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 pay overtime compensation
22 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
23 the California Labor Code and California regulations and the applicable
24 California Wage Order;
- 25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;

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

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is 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 the correct pay for meal period violations 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

1 rates in effect during the pay period and the corresponding amount of time
2 worked at each overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the employer
5 must pay the employee all wages due without abatement, by failing to
6 tender full payment and/or restitution of wages owed or in the manner
7 required by California law to the members of the CALIFORNIA LABOR
8 SUB-CLASS who have terminated their employment; and
9 f. Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS all gratuities.

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

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

1 and the members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful, deceptive, unfair
3 and pervasive pattern of misconduct engaged in by DEFENDANT; and
4 d. The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
6 retained counsel who are competent and experienced in Class Action
7 litigation. There are no material conflicts between the claims of the
8 representative PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
11 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

18 i. 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 parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 or refused to act on grounds generally applicable to the CALIFORNIA

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the correct
4 overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

26 2. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 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.

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

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

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

- d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which 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.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

8 45. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
25 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
26 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 48. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. 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 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
11 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
12 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
13 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

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

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
19 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
20 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
21 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
22 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
25 restitution of wages wrongfully withheld.

26 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 54. PLAINTIFF further demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 55. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT ha obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
9 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law
10 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
11 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

28 75. 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

1 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
19 As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
20 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to
22 pay these employees the correct applicable overtime wages for all overtime worked.

23 80. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

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

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

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

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

20 85. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
22 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
23 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
25 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’s
26 business records and witnessed by employees.

27 86. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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 meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

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.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

25 97. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 101. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
2 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
3 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
4 the statutory rate and costs under Cal. Lab. Code § 2802.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §226)**

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-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this Complaint.

13 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 “accurate itemized” statement in writing showing:

- 15 (1) gross wages earned,
16 (2) total hours worked by the employee, except for any employee whose compensation is
17 solely based on a salary and who is exempt from payment of overtime under subdivision
18 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
19 (3) the number of piecerate units earned and any applicable piece rate if the employee is
20 paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
23 (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid,
25 (7) the name of the employee and his or her social security number, except that by January
26 1, 2008, only the last four digits of his or her social security number or an employee
27
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1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

6
7 104. When DEFENDANT did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, did not pay the correct overtime
9 wages, and failed to pay gratuities, DEFENDANT violated Cal. Lab. Code § 226 in that
10 DEFENDANT failed to provide an accurate wage statement in writing that properly and
11 accurately itemizes all missed meal and rest periods and reporting time wages owed to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also
13 failed to set forth the correct wages earned by the employees.

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

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

106. 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.

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

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

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

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

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 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.

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

111. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

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

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

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

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

20 115. DEFENDANT's conduct, as set forth above, in failing to remit to non-
21 managerial banquet service employees the total proceeds of gratuities added to banquet
22 customers' bills constitutes a violation of California Labor Code Section 351. This violation is
23 enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200
24 et seq. DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
25 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
26 to the non-managerial service employees the total gratuities that were charged to customers.

27 116. As a proximate result of the aforementioned violations, PLAINTIFFS and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

6 **(Alleged by PLAINTIFF against all Defendants)**

7 117. PLAINTIFF reallege and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 118. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
11 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
14 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
15 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
16 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
17 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

18 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all individuals who are or previously were employed by DEFENDANT and classified as non-
22 exempt employees in California during the time period of March 19, 2020 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 120. On March 19, 2020, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 121. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay wages when due, (d) failed
8 to pay overtime compensation, (e) failed to pay minimum wages, and (f) failed to pay gratuities,
9 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
10 203, 204, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representatives of the State of California for the illegal
14 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

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

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for a judgment against each Defendants, as follows:

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6 1. On behalf of the CALIFORNIA CLASS:

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

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

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
20 class action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum, overtime compensation, and gratuities due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
25 the statutory rate;
26 c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226

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

6 e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order; and,

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

11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:

13 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
14 General Act of 2004.

15 4. On all Claims:

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

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

18 c. An award of penalties, attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or
20 § 1198.

21 DATED: November 5, 2020

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23 **JCL LAW FIRM, APC**

24 By: _____

25 Jean-Claude Lapuyade
26 Attorney for Plaintiff
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DEMAND FOR A JURY TRIAL

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

DATED: November 5, 2020

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for Plaintiff

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #26701

March 24, 2020

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

SCOTT'S SACRAMENTO RIVER, INC c/o ALAN IRVINE 1020 CAPTAINS TABLE RD #3 SACRAMENTO CA 95822	GORDON REES SCULLY MANSUKHANI Mark S. Posard Annette L. Rose 3 Parkcenter Drive, Suite 200 Sacramento, CA 92825
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs DIONYSIOS YURI SHALLAN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against SCOTT'S SACRAMENTO RIVER, INC. ("Defendant"). Plaintiff was employed by Defendant in California since 2014 as a nonexempt employee entitled to overtime and the legally required meal and rest breaks and payment for all time worked under Defendants' control, including minimum wage and overtime worked, as well as to other compensation in the form of service charges, gratuities and tips. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wage and overtime wages, and for all of their missed meal and rest breaks. Furthermore, Defendant routinely added anywhere from 18%-22% service charges to its food and beverage banquet bills. These service charges were in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff. It is typical and customary in the hospitality industry that establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill. Thus, when customers have paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-22% are paid for food and beverage service, customers have paid these charges reasonably believing they were remitted to the service staff. However, Defendant has not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, Defendant has a policy and

practice of retaining for itself a portion or the entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-service employees. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

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Attorneys for Plaintiff

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

DIONYSIOS YURI SHALLAN, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff DIONYSIOS YURI SHALLAN (“PLAINTIFF”), individuals, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. Defendant SCOTT'S SACRAMENTO RIVER, INC. (“DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT manages and operates a restaurant and banquet hall.

10 3. PLAINTIFF has been employed by DEFENDANT since 2014 and has been at all
11 times classified by DEFENDANTS as a non-exempt employee, paid in whole or in part on an
12 hourly basis.

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

19 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
22 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
23 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
24 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
25 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
26 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

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

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

20 **THE CONDUCT**

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

1 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF and
2 CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
3 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and
5 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
6 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As a
7 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
8 overtime wage compensation, and meal break wages, by working without their time being
9 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
11 time worked, is evidenced by DEFENDANT's business records. As a result, the PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
15 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were not
16 being paid their correct minimum wage and overtime compensation.

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

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

1 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
2 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
3 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without the correct meal premium compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

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

18 12. When PLAINTIFF and other CALIFORNIA CLASS Members worked missed
19 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, the correct overtime rate for overtime worked, including, work performed in
22 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
23 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
24 employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
26 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
27 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

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

3 13. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
4 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
5 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
6 to the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
7 18%-22% service charges to its food and beverage banquet bills. These service charges were in
8 the form of automatic charges which customers are required to pay, and which reasonably appear
9 to be gratuities for the service staff. It is typical and customary in the hospitality industry that
10 establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill.
11 Thus, when customers have paid these charges, it is reasonable for them to have believed they
12 were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted
13 to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-
14 22% are paid for food and beverage service, customers have paid these charges reasonably
15 believing they were remitted to the service staff. However, DEFENDANT has not remitted the
16 total proceeds of these gratuities to the non-managerial employees who serve the food and
17 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion or the
18 entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-
19 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
20 received the total proceeds of the gratuities, to which they are entitled to under California law

21 14. DEFENDANT is generally in the business of owning and operating a restaurant
22 and a banquet hall. In addition, DEFENDANT also provides banquet services to large groups,
23 such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
25 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA
26 CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were
27 kept by DEFENDANT and their agents who were not in the chain of service from which the
28 gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any

1 gratuities kept by DEFENDANT were illegal and in violation of California law because
2 PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
3 service for to whom the gratuity should have been paid.

4 15. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
6 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
7 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
8 “gratuity” as including any money that has been paid or given or left for an employee by a patron
9 of a business over and above the actual amount due the business for services rendered or for
10 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
11 to keep accurate records of all gratuities they receive, directly or indirectly.

12 16. Although tip pooling is not expressly prohibited by the Labor Code, employees
13 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
14 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
15 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
16 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
17 A148513 (Court of Appeals of California, First District, Division Two.).

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
22 calculate and record the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
23 Members. The proper calculation of these employees’ overtime is the DEFENDANT’s burden.
24 As a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
25 DEFENDANT failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

1 18. Specifically as to PLAINTIFF pay, from time to time, PLAINTIFF would clock
2 out during what was supposed to be his off-duty meal breaks, as well as at the end of his shifts,
3 and continue to perform work as required by DEFENDANT. As a result, DEFENDANT failed
4 to pay PLAINTIFF all minimum and overtime wages due to them for all time spent under
5 DEFENDANT's control. PLAINTIFF was also from time to time unable to take off duty meal
6 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period from time to time in which they were required by DEFENDANT to
10 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without the
11 correct premium compensation and in accordance with DEFENDANT's strict corporate policy
12 and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
13 display PLAINTIFF's correct overtime pay and payments for missed meal and rest periods for
14 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully
15 paid PLAINTIFF the compensation still owed to him or any penalty wages owed to him under
16 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
17 the sum or value of \$75,000.

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

1 20. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members, as a business expense, were required by DEFENDANTS to use personal cellular phones
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
5 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed
7 business expenses which included, but were not limited to, costs related to the use of their personal
8 cellular phones all on behalf of and for the benefit of DEFENDANT. The amount in controversy
9 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

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

18 **THE CALIFORNIA CLASS**

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

1 24. 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 25. The California Legislature has commanded that “all wages... ..earned by any
5 person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
8 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
9 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
10 however, is statutorily authorized to “establish exemptions from the requirement that an overtime
11 rate of compensation be paid... ..for executive, administrative, and professional employees,
12 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
13 exemption, [and] customarily and regularly exercises discretion and independent judgment in
14 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
15 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
16 exemption from the above requirements.

17 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 overtime compensation for overtime worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member is paid for all overtime worked. DEFENDANT, however, as a matter of uniform
26 and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid overtime for all overtime worked. This common business

1 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
2 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

4 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked, as required by California Labor Code §§ 204 and 510, *et seq.*

7 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
13 deceptively having in place company policies, practices and procedures
14 that uniformly and systematically failed to record and pay PLAINTIFF and
15 the other members of the CALIFORNIA CLASS for all time worked,
16 including minimum wages owed and overtime wages owed for work
17 performed by these employees;
- 18 b. Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members; and
- 22 c. Committing an act of unfair competition in violation of the UCL, by failing
23 to provide the PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with all gratuities in violation of Cal. Lab. Code Section 351;

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

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

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

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or
- 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as
17 a whole in that DEFENDANT uniformly failed to pay all wages due.
18 Including the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;
28

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

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

14 d. 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
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or

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

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

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

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

8 33. This 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
12 CLASS Members because the DEFENDANT's employment practices are
13 uniform and systematically applied with respect to the CALIFORNIA
14 CLASS;
- 15 b. A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 d. PLAINTIFF and the other CALIFORNIA CLASS Members, will not be
25 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
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

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

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

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
23 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
24 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT failed to pay overtime compensation for
7 the overtime worked, even though DEFENDANT enjoyed the benefit of this work, required
8 employees to perform this work and permitted or suffered to permit this work. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

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

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

19 39. 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 pay overtime compensation
22 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
23 the California Labor Code and California regulations and the applicable
24 California Wage Order;
25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;
28

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

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is 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 the correct pay for meal period violations 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

1 rates in effect during the pay period and the corresponding amount of time
2 worked at each overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the employer
5 must pay the employee all wages due without abatement, by failing to
6 tender full payment and/or restitution of wages owed or in the manner
7 required by California law to the members of the CALIFORNIA LABOR
8 SUB-CLASS who have terminated their employment; and
9 f. Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS all gratuities.

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

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

1 and the members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful, deceptive, unfair
3 and pervasive pattern of misconduct engaged in by DEFENDANT; and
4 d. The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
6 retained counsel who are competent and experienced in Class Action
7 litigation. There are no material conflicts between the claims of the
8 representative PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
11 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

18 i. 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 parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 or refused to act on grounds generally applicable to the CALIFORNIA

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the correct
4 overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

26 2. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 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.

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

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

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

- d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which 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.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

8 45. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
25 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
26 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 48. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. 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 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
11 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
12 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
13 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

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

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
19 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
20 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
21 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
22 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
25 restitution of wages wrongfully withheld.

26 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 54. PLAINTIFF further demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 55. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT ha obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
9 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law
10 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
11 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

28 75. 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

1 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
19 As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
20 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to
22 pay these employees the correct applicable overtime wages for all overtime worked.

23 80. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

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

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

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

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

20 85. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
22 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
23 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
25 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’s
26 business records and witnessed by employees.

27 86. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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 meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

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.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

25 97. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §2802)

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

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

99. 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.

100. 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 DEFENDANT'S. 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 same. 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 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code §226)

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

102. 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.

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) 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

1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

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

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

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

106. 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.

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

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

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

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

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 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.

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

111. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

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

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

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

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

20 115. DEFENDANT's conduct, as set forth above, in failing to remit to non-
21 managerial banquet service employees the total proceeds of gratuities added to banquet
22 customers' bills constitutes a violation of California Labor Code Section 351. This violation is
23 enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200
24 et seq. DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
25 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
26 to the non-managerial service employees the total gratuities that were charged to customers.

27 116. As a proximate result of the aforementioned violations, PLAINTIFFS and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

6 **(Alleged by PLAINTIFF against all Defendants)**

7 117. PLAINTIFF reallege and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 118. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
11 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
14 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
15 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
16 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
17 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

18 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all individuals who are or previously were employed by DEFENDANT and classified as non-
22 exempt employees in California during the time period of March 19, 2020 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 120. On March 19, 2020, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 121. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay wages when due, (d) failed
8 to pay overtime compensation, (e) failed to pay minimum wages, and (f) failed to pay gratuities,
9 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
10 203, 204, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representatives of the State of California for the illegal
14 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

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

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for a judgment against each Defendants, as follows:

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6 1. On behalf of the CALIFORNIA CLASS:

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

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

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
20 class action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum, overtime compensation, and gratuities due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
25 the statutory rate;
26 c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 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

- d. 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;
- e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all Claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and,
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or § 1198.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1