

SUMMONS (CITACION JUDICIAL)

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

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

THE BEACH CHALET, L.P., a California Limited Partnership; and
DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JESUS GARCIA, an individual, on behalf of himself and on behalf of all
persons similarly situated,

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

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

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

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

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

San Francisco Superior Court
400 McAllister St
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-22-600090

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN: 277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:
(Fecha) **06/10/2022**

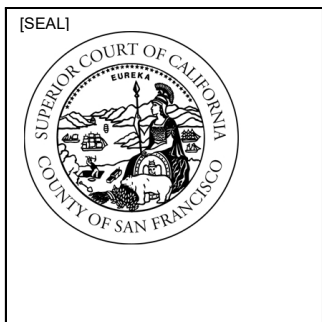
Clerk, by _____, Deputy
(Secretario) **JEFFREY FLORES** (Adjunto)

(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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Attorneys for Plaintiff JESUS GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESUS GARCIA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

THE BEACH CHALET, L.P., a California
Limited Partnership; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/09/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

CGC-22-600090

ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802; and
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

Plaintiff Jesus Garcia (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant The Beach Chalet, L.P. (“DEFENDANT”) is a California limited partnership that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. DEFENDANT is a brewery and restaurant in San Francisco, California.

3. PLAINTIFF was employed by DEFENDANT in California from March 2021 to January of 2022 and was at all times classified by DEFENDANT as a non-exempt employee entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the

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

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

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

25 **THE CONDUCT**

26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
27 to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the
28 time during which an employee is subject to the control of an employer, including all the time the

1 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
2 CLASS Members to work without paying them for all the time they are under DEFENDANT's
3 control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during
4 what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time
5 interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal
6 break. DEFENDANT, as a matter of established company policy and procedure, administers a
7 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
8 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course
9 of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they
10 would have been paid had they been paid for actual recorded time rather than "rounded" time. As a
11 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
12 wage compensation, and off duty meal breaks by working without their time being correctly
13 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not
14 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced
15 by DEFENDANT's business records.

16 9. State and federal law provides that employees must be paid overtime and meal and rest break
17 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
18 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied
19 to specific elements of an employee's performance.

20 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members'
21 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
22 other CALIFORNIA CLASS Members incentive wages based on their performance for
23 DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly
24 basis with incentive compensation when the employees met the various performance goals set by
25 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and
26 meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members,
27 DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate
28 of pay" for purposes of calculating overtime pay and meal and rest break premium pay.

1 Management and supervisors described the incentive program to potential and new employees as
2 part of the compensation package. As a matter of law, the incentive compensation received by
3 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate of
4 pay.” The failure to do so has resulted in a underpayment of overtime compensation and meal and
5 rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

6 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
7 Members were from time to time unable to take thirty (30) minute off duty meal breaks and were
8 not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
9 Members were required from time to time to perform work as ordered by DEFENDANT for more
10 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from
11 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-
12 duty meal period for some workdays in which these employees were required by DEFENDANT to
13 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal
14 period times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
15 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without
16 additional compensation and in accordance with DEFENDANT’s corporate policy and practice.

17 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
18 Members were also required from time to time to work in excess of four (4) hours without being
19 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods
20 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
22 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten
23 (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
24 other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
25 Additionally, the applicable California Wage Order requires employers to provide employees with
26 off-duty rest periods, which the California Supreme Court defined as time during which an
27 employee is relieved from all work related duties and free from employer control. In so doing, the
28 Court held that the requirement under California law that employers authorize and permit all

1 employees to take rest period means that employers must relieve employees of all duties and
2 relinquish control over how employees spend their time which includes control over the locations
3 where employees may take their rest period. Employers cannot impose controls that prohibit an
4 employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's
5 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks
6 and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA
7 CLASS Members cannot leave the work premises during their rest period.

8 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and
9 pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
10 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
11 was required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
12 meaning the time during which an employee was subject to the control of an employer, including
13 all the time the employee was permitted or suffered to permit this work. DEFENDANT required
14 these employees to work off the clock without paying them for all the time they were under
15 DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF
16 and the other members of the CALIFORNIA CLASS were under compensated for all time worked.
17 As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
18 working without their time being accurately recorded and without compensation at the applicable
19 minimum wage and overtime wage rates. To the extent that the time worked off the clock does not
20 qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time
21 worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

22 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members
23 of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which
24 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate itemized
26 wage statement in writing showing, among other things, gross wages earned and all applicable
27 hourly rates in effect during the pay period and the corresponding amount of time worked at each
28 hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue

1 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
2 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUBCLASS with wage statements which violated Cal.
4 Lab. Code § 226.

5 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied
6 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
7 more than seven (7) calendar days following the close of the payroll period.

8 Cal. Lab. Code § 210 provides:

9 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
10 article, every person who fails to pay the wages of each employee as provided in Sections.
11 . . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial violation, one
12 hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
13 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
14 to pay each employee, plus 25 percent of the amount unlawfully withheld.

15 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
16 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
17 period in accordance with Cal. Lab. Code § 204(d).

18 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA CLASS
19 Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
20 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn nondiscretionary
21 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT, underpaid sick
22 pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

23 18. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt, employees be
24 calculated by dividing the employee's total wages, not including overtime premium pay, by the
25 employee's total hours worked in the full pay periods of the prior 90 days of employment.

26 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular
27 rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned nondiscretionary
28 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was
paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as opposed
to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

1 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
2 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time
3 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
4 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
5 PLAINTIFF and members of the CALIFORNIA CLASS whose employment has separated are
6 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

7 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect or
8 receive from an employee any part of wages theretofore paid by said employer to said employee."
9 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA
10 LABOR SUB-CLASS Members, made unlawful deductions from compensation payable to
11 PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of
12 the deductions from compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-
13 CLASS Members, and thereby failed to pay these employees all wages due at each applicable pay
14 period and upon termination. PLAINTIFF and members of the CALIFORNIA LABOR SUB-
15 CLASS seek recovery of all illegal deductions from wages according to proof, related penalties,
16 interest, attorney fees and costs.

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

27 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS Members
28 as a business expense, were required by DEFENDANT to use their own personal cellular phones

1 as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
2 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
3 cellular phones and personal home offices for DEFENDANT's benefit. Specifically, PLAINTIFF
4 and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal
5 cellular phones and personal home offices. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
7 unreimbursed business expenses which included, but were not limited to, costs related to the use of
8 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

9 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-
10 duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
11 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT
12 did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
13 and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The
14 nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved
15 of all of PLAINTIFF's duties for the legally required off-duty meal periods. As a result,
16 DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced
17 by DEFENDANT's business records. The amount in controversy for PLAINTIFF individually does
18 not exceed the sum or value of \$75,000.

19 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

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

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

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

31. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

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

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

- a. The persons who comprise the CALIFORNIA 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 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, was classified as a nonexempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and 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 and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

25 1. With respect to the First Cause of Action, the final relief on behalf of the
26 CALIFORNIA CLASS sought does not relate exclusively to restitution
27 because through this claim PLAINTIFF seeks declaratory relief holding
28 that the DEFENDANT's policy and practices constitute unfair

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
28 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally,

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

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

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

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

- 19 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
20 compensation due to members of the CALIFORNIA LABOR SUBCLASS for
21 missed meal and rest breaks in violation of the California Labor Code and California
22 regulations and the applicable California Wage Order;
- 23 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- 25 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
26 conduct;
- 27 d. (d) The proper measure of damages and penalties owed to the members of the
28 CALIFORNIA LABOR SUB-CLASS; and,

1 e. Whether DEFENDANT's conduct was willful.

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

- 4 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF
5 and the members of the CALIFORNIA LABOR SUBCLASS all wages due for
6 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §
7 1194;
- 8 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
9 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
10 correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab.
11 Code §§ 1194 and 1197;
- 12 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members
13 of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in
14 writing showing the corresponding correct amount of wages earned by the employee;
- 15 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
16 the other members of the CALIFORNIA LABOR SUBCLASS with all legally
17 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally
18 required off-duty rest breaks;
- 19 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
20 employee is discharged or quits from employment, the employer must pay the
21 employee all wages due without abatement, by failing to tender full payment and/or
22 restitution of wages owed or in the manner required by California law to the
23 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their
24 employment; and,
- 25 f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
26 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred
27 in the discharge of their job duties.
28

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

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

27 44. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
28 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, statutory
2 and other legal questions within the class format, prosecution of separate actions by
3 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk
4 of:
- 5 1. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or,
 - 9 2. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or substantially
12 impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-
15 CLASS, making appropriate class-wide relief with respect to the CALIFORNIA
16 LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due.
17 Including the correct wages for all time worked by the members of the
18 CALIFORNIA LABOR SUBCLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
21 of California Law as listed above, and predominate over any question affecting only
22 individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is
23 superior to other available methods for the fair and efficient adjudication of the
24 controversy, including consideration of:
- 25 1. The interests of the members of the CALIFORNIA LABOR SUBCLASS
26 in individually controlling the prosecution or defense of separate actions in
27 that the substantial expense of individual actions will be avoided to recover
28 the relatively small amount of economic losses sustained by the individual

- 1 CALIFORNIA LABOR SUB-CLASS Members when compared to the
2 substantial expense and burden of individual prosecution of this litigation;
3 2. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:
- 5 A. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUBCLASS, which would
7 establish incompatible standards of conduct for the DEFENDANT;
8 and/or,
- 9 B. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a practical matter be
11 dispositive of the interests of the other members not parties to the
12 adjudication or substantially impair or impede their ability to protect
13 their interests;
- 14 3. In the context of wage litigation because a substantial number of individual
15 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
16 legal rights out of fear of retaliation by DEFENDANT, which may
17 adversely affect an individual's job with DEFENDANT or with a
18 subsequent employer, the Class Action is the only means to assert their
19 claims through a representative; and,
- 20 4. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will obviate
22 the need for unduly and unnecessary duplicative litigation that is likely to
23 result in the absence of certification of this action pursuant to Cal. Code of
24 Civ. Proc. § 382.

25 45. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
26 Code of Civ. Proc. § 382 because:
27
28

- 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 SUBCLASS 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 who worked for

1 DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-
2 CLASS PERIOD; and,

- 3 i. Class treatment provides manageable judicial treatment calculated to bring a
4 efficient and rapid conclusion to all litigation of all wage and hour related claims
5 arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA
6 LABOR SUB-CLASS.

7 **FIRST CAUSE OF ACTION**

8 **For Unlawful Business Practices**

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

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

13 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

14 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
15 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
16 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:
17 Any person who engages, has engaged, or proposes to engage in unfair competition may
18 be enjoined in any court of competent jurisdiction. The court may make such orders or
19 judgments, including the appointment of a receiver, as may be necessary to prevent the use
20 or employment by any person of any practice which constitutes unfair competition, as
21 defined in this chapter, or as may be necessary to restore to any person in interest any
22 money or property, real or personal, which may have been acquired by means of such unfair
23 competition.

21 Cal. Bus. & Prof. Code § 17203.

22 49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
23 business practice which violates California law, including but not limited to, the applicable
24 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the
26 Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
27 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
28

1 may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
2 restitution of wages wrongfully withheld.

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

8 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in
9 that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest
10 periods, the required amount of compensation for missed meal and rest periods and overtime and
11 minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary business
12 expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime
13 worked as a result of failing to include non-discretionary incentive compensation into their regular
14 rates of pay for purposes of computing the proper overtime pay due to a business practice that cannot
15 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
16 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
17 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
18 wages wrongfully withheld.

19 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
20 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
21 members of the CALIFORNIA CLASS to be underpaid during their employment with
22 DEFENDANT.

23 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
24 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
25 required meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
26 required by Cal. Lab. Code §§ 226.7 and 512.

27 54. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA
28 CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not

1 timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
2 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

12 57. All the acts described herein as violations of, among other things, the Industrial Welfare
13 Commission Wage Orders, the California Code of Regulations, and the California Labor Code,
14 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 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
18 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 CALIFORNIA
20 CLASS have been deprived, by means of the above described unlawful and unfair business
21 practices, including earned but unpaid wages for all time worked.

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

26 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
27 and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. 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 unlawful
4 and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

9 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

14 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
15 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work
16 without paying them for all the time they were under DEFENDANT's control. During the
17 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
19 constituting a failure to pay all earned wages.

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

25 72. DEFENDANT knew or should have known that PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
27 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
28 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT

1 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

23 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
25 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
26 overtime work.

27 81. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
28 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a

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

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

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

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

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

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

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

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

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

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

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

Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

91. 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.

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

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

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

9 **FIFTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

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

98. 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.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

100. 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 piece-rate 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 identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements

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

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

21 **SEVENTH CAUSE OF ACTION**

22 **For Failure to Reimburse Employees for Required Expenses**

23 **[Cal. Lab. Code § 2802]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
25 **Defendants)**

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

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

1 An employer shall indemnify his or her employee for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her
3 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.

4 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
5 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for
6 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
7 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
8 members for expenses which included, but were not limited to, costs related to using their personal
9 cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and
10 other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their
11 personal cellular phones and personal home offices in order to perform work related job tasks.
12 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
13 LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones
14 for DEFENDANT within the course and scope of their employment for DEFENDANT. These
15 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
16 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
17 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
19 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws
20 and regulations of California.

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

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EIGHTH CAUSE OF ACTION
For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

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

108. Cal. Lab. Code § 200 provides, in relevant part, 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.

109. 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."

110. 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.

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

112. Cal. Lab. Code § 203 provides, in relevant part, that:

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

113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUBCLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

117. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves

1 and all non-exempt and exempt employees who worked for Defendant in California during the
2 time period of April 4, 2021 until the present (the "AGGRIEVED EMPLOYEES").

3 118. On April 4, 2022, PLAINTIFF gave written notice by certified mail to the Labor and
4 Workforce Development Agency (the "Agency") and the employer of the specific provisions
5 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
6 attached hereto and incorporated by this reference herein. The statutory waiting period for
7 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
8 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to
9 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

11 119. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANTS (a) failed to properly record and pay
13 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
14 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
15 wage statements, (c) failed to provide complaint meal breaks and rest breaks, (d) failed to
16 correctly calculate the regular rate of pay, and (e) failed to timely pay wages, all in violation of
17 the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
18 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510,
19 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Cal. Bus.
20 & Prof. Code §§17200 and 17203, and the applicable Industrial Wage Order(s), and thereby gives
21 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
22 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
23 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
24 the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- 1 d. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 e. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197;
- 5 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
6 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
7 costs of suit.; and,
- 8 g. The wages of all terminated employees in the CALIFORNIA LABORSUB-CLASS
9 as a penalty from the due date thereof at the same rate until paid or until an action
10 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
12 Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act
13 of 2004;
- 14 4. On all claims:
- 15 a. An award of interest, including prejudgment interest at the legal rate;
- 16 b. Such other and further relief as the Court deems just and equitable; and,
- 17 c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
19 §2802.
20

21 DATED: June 9, 2022

22 **ZAKAY LAW GROUP, APLC**

23 By:  _____

24 Shani O. Zakay
25 Attorney for PLAINTIFF
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: June 9, 2022

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay

Attorney for PLAINTIFF

EXHIBIT 1



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

THE BEACH CHALET, L.P.

c/o GREG TRUPPELLI
1411 Powell Street
Emeryville, CA 94608

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3711

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JESUS GARCIA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant THE BEACH CHALET, L.P. (hereinafter collectively “Defendant”). Plaintiff was employed by Defendant in California from March of 2021 to January of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant in California during the relevant claim period.

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.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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 lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff JESUS GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESUS GARCIA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

THE BEACH CHALET, L.P., a California
Limited Partnership; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802; and,
8) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

Plaintiff Jesus Garcia (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant The Beach Chalet, L.P. (“DEFENDANT”) is a California limited partnership that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. DEFENDANT is a brewery and restaurant in San Francisco, California.

3. PLAINTIFF was employed by DEFENDANT in California from March 2021 to January of 2022 and was at all times classified by DEFENDANT as a non-exempt employee entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to

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

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
24 to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the
25 time during which an employee is subject to the control of an employer, including all the time the
26 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
27 CLASS Members to work without paying them for all the time they are under DEFENDANT's
28 control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during

1 what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time
2 interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal
3 break. DEFENDANT, as a matter of established company policy and procedure, administers a
4 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
5 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course
6 of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they
7 would have been paid had they been paid for actual recorded time rather than "rounded" time. As a
8 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
9 wage compensation, and off duty meal breaks by working without their time being correctly
10 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not
11 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced
12 by DEFENDANT's business records.

13 9. State and federal law provides that employees must be paid overtime and meal and rest break
14 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
15 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied
16 to specific elements of an employee's performance.

17 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members'
18 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
19 other CALIFORNIA CLASS Members incentive wages based on their performance for
20 DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly
21 basis with incentive compensation when the employees met the various performance goals set by
22 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and
23 meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members,
24 DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate
25 of pay" for purposes of calculating overtime pay and meal and rest break premium pay.
26 Management and supervisors described the incentive program to potential and new employees as
27 part of the compensation package. As a matter of law, the incentive compensation received by
28 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of

1 pay.” The failure to do so has resulted in a underpayment of overtime compensation and meal and
2 rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

3 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
4 Members were from time to time unable to take thirty (30) minute off duty meal breaks and were
5 not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
6 Members were required from time to time to perform work as ordered by DEFENDANT for more
7 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from
8 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-
9 duty meal period for some workdays in which these employees were required by DEFENDANT to
10 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal
11 period times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
12 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without
13 additional compensation and in accordance with DEFENDANT’s corporate policy and practice.

14 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
15 Members were also required from time to time to work in excess of four (4) hours without being
16 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods
17 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
19 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten
20 (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
21 other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
22 Additionally, the applicable California Wage Order requires employers to provide employees with
23 off-duty rest periods, which the California Supreme Court defined as time during which an
24 employee is relieved from all work related duties and free from employer control. In so doing, the
25 Court held that the requirement under California law that employers authorize and permit all
26 employees to take rest period means that employers must relieve employees of all duties and
27 relinquish control over how employees spend their time which includes control over the locations
28 where employees may take their rest period. Employers cannot impose controls that prohibit an

1 employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's
2 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks
3 and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA
4 CLASS Members cannot leave the work premises during their rest period.

5 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and
6 pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
7 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
8 was required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
9 meaning the time during which an employee was subject to the control of an employer, including
10 all the time the employee was permitted or suffered to permit this work. DEFENDANT required
11 these employees to work off the clock without paying them for all the time they were under
12 DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF
13 and the other members of the CALIFORNIA CLASS were under compensated for all time worked.
14 As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
15 working without their time being accurately recorded and without compensation at the applicable
16 minimum wage and overtime wage rates. To the extent that the time worked off the clock does not
17 qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time
18 worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

19 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which
21 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
22 provides that every employer shall furnish each of his or her employees with an accurate itemized
23 wage statement in writing showing, among other things, gross wages earned and all applicable
24 hourly rates in effect during the pay period and the corresponding amount of time worked at each
25 hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue
26 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
27 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
28

1 members of the CALIFORNIA LABOR SUBCLASS with wage statements which violated Cal.
2 Lab. Code § 226.

3 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied
4 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
5 more than seven (7) calendar days following the close of the payroll period.

6 Cal. Lab. Code § 210 provides:

7 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
8 article, every person who fails to pay the wages of each employee as provided in Sections.
9 . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one
10 hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
11 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
12 to pay each employee, plus 25 percent of the amount unlawfully withheld.

13 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
14 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
15 period in accordance with Cal. Lab. Code § 204(d).

16 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA CLASS
17 Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
18 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn nondiscretionary
19 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT, underpaid sick
20 pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

21 18. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt, employees be
22 calculated by dividing the employee's total wages, not including overtime premium pay, by the
23 employee's total hours worked in the full pay periods of the prior 90 days of employment.

24 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular
25 rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned nondiscretionary
26 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was
27 paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as opposed
28 to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time
penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes

1 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
2 PLAINTIFF and members of the CALIFORNIA CLASS whose employment has separated are
3 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

4 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect or
5 receive from an employee any part of wages theretofore paid by said employer to said employee."
6 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members, made unlawful deductions from compensation payable to
8 PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of
9 the deductions from compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-
10 CLASS Members, and thereby failed to pay these employees all wages due at each applicable pay
11 period and upon termination. PLAINTIFF and members of the CALIFORNIA LABOR SUB-
12 CLASS seek recovery of all illegal deductions from wages according to proof, related penalties,
13 interest, attorney fees and costs.

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

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

1 and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal
2 cellular phones and personal home offices. As a result, in the course of their employment with
3 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
4 unreimbursed business expenses which included, but were not limited to, costs related to the use of
5 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

6 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-
7 duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
8 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT
9 did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
10 and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The
11 nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved
12 of all of PLAINTIFF's duties for the legally required off-duty meal periods. As a result,
13 DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced
14 by DEFENDANT's business records. The amount in controversy for PLAINTIFF individually does
15 not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business
28 Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,

1 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals
2 who are or previously were employed by DEFENDANT in California and classified as non-exempt
3 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
4 prior to the filing of this Complaint and ending on the date as determined by the Court (the
5 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
6 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

9 29. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of
10 the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
11 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a
12 practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF
13 and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this
14 work, required employees to perform this work and permits or suffers to permit this work.

15 30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS
16 Member was paid accurately for all meal and rest breaks missed as required by California laws. The
17 DEFENDANT, however, as a matter of policy and procedure failed to have in place during the
18 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that
19 each and every CALIFORNIA CLASS Member is paid as required by law. This common business
20 practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
21 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
22 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

23 31. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS
24 Members is impracticable.

25 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 26 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§
27 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place
28 company policies, practices and procedures that failed to record and pay PLAINTIFF

1 and the other members of the CALIFORNIA CLASS for all time worked, including
2 minimum wages owed and overtime wages owed for work performed by these
3 employees; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 4. A class action is superior to other available methods for the fair and
28 efficient adjudication of this litigation because class treatment will obviate

1 the need for unduly and unnecessary duplicative litigation that is likely to
2 result in the absence of certification of this action pursuant to Cal. Code of
3 Civ. Proc. § 382.

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

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

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
3 respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANT; and,
- 6 i. Class treatment provides manageable judicial treatment calculated to bring a
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA
9 CLASS.

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

15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
25 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally,
26 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
27 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
28 LABOR SUB-CLASS and reporting time wages owed to these employees, even though

1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
2 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR
3 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the
4 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
5 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
6 CLASS PERIOD should be adjusted accordingly.

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

12 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA
13 LABOR SUB-CLASS Members is impracticable.

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

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

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is

1 impracticable and the disposition of their claims as a class will benefit the parties
2 and the Court;

- 3 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
4 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
5 and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 6 c. The claims of the representative PLAINTIFF are typical of the claims of each
7 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other
8 members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee
9 paid on an hourly basis who was subjected to the DEFENDANT's practice and
10 policy which failed to pay the correct amount of wages due to the CALIFORNIA
11 LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of
12 DEFENDANT's employment practices. PLAINTIFF and the members of the
13 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed
14 by the same unlawful, deceptive, and unfair misconduct engaged in by
15 DEFENDANT; and,
- 16 d. The representative PLAINTIFF will fairly and adequately represent and protect the
17 interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who
18 are competent and experienced in Class Action litigation. There are no material
19 conflicts between the claims of the representative PLAINTIFF and the members of
20 the CALIFORNIA LABOR SUB-CLASS that would make class certification
21 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
22 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 2. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUBCLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
1. The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 2. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

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

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

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

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

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

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

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

- individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class wide relief appropriate with respect to the CALIFORNIA LABOR SUBCLASS 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 who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- i. Class treatment provides manageable judicial treatment calculated to bring a 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.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

7 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

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

11 Any person who engages, has engaged, or proposes to engage in unfair competition may
12 be enjoined in any court of competent jurisdiction. The court may make such orders or
13 judgments, including the appointment of a receiver, as may be necessary to prevent the use
14 or employment by any person of any practice which constitutes unfair competition, as
15 defined in this chapter, or as may be necessary to restore to any person in interest any
16 money or property, real or personal, which may have been acquired by means of such unfair
17 competition.

18 Cal. Bus. & Prof. Code § 17203.

19 49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
20 business practice which violates California law, including but not limited to, the applicable
21 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the
23 Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
24 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
25 may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
26 restitution of wages wrongfully withheld.

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

1 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in
2 that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest
3 periods, the required amount of compensation for missed meal and rest periods and overtime and
4 minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary business
5 expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime
6 worked as a result of failing to include non-discretionary incentive compensation into their regular
7 rates of pay for purposes of computing the proper overtime pay due to a business practice that cannot
8 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
10 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
11 wages wrongfully withheld.

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

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

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

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

27 56. By and through the unlawful and unfair business practices described herein, DEFENDANT
28 has obtained valuable property, money and services from PLAINTIFF and the other members of

1 the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of
2 valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees
3 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
4 competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION
For Failure To Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197 and 1197.1]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

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

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

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

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

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

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

67. DEFENDANT’s unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

10 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
11 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work
12 without paying them for all the time they were under DEFENDANT's control. During the
13 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,
15 constituting a failure to pay all earned wages.

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

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

27 73. In performing the acts and practices herein alleged in violation of California labor laws, and
28 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time

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

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

18 **THIRD CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

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

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

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

26 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
27 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees

1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
2 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

23 82. In committing these violations of the California Labor Code, DEFENDANT inaccurately
24 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and
25 other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to
26 avoid the payment of all earned wages, and other benefits in violation of the California Labor Code,
27 the Industrial Welfare Commission requirements and other applicable laws and regulations.
28

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

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

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

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

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

26 88. DEFENDANT knew or should have known that PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
28 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay

1 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
2 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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FOURTH CAUSE OF ACTION
For Failure to Provide Required Meal Periods
[Cal. Lab. Code §§ 226.7 & 512]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

91. 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.

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

93. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
2 period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**

10 **Defendants)**

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 226]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**

8 **Defendants)**

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

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

- 14 (1) gross wages earned,
15 (2) total hours worked by the employee, except for any employee whose compensation
16 is solely based on a salary and who is exempt from payment of overtime under
17 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
18 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
26 January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown on
28 the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code
§ 226 provides that every employer shall furnish each of his or her employees with an accurate
itemized wage statement in writing showing, among other things, gross wages earned and all

1 applicable hourly rates in effect during the pay period and the corresponding amount of time worked
2 at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed
3 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
4 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
6 Cal. Lab. Code § 226.

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

18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Reimburse Employees for Required Expenses**

20 **[Cal. Lab. Code § 2802]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All** 22 **Defendants)**

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

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

26 An employer shall indemnify his or her employee for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her
28 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.

1 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
2 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for
3 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
4 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 members for expenses which included, but were not limited to, costs related to using their personal
6 cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and
7 other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their
8 personal cellular phones and personal home offices in order to perform work related job tasks.
9 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
10 LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones
11 for DEFENDANT within the course and scope of their employment for DEFENDANT. These
12 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
13 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
14 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
15 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws
17 and regulations of California.

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

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EIGHTH CAUSE OF ACTION
For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

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

108. Cal. Lab. Code § 200 provides, in relevant part, 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.

109. 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."

110. 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.

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

112. Cal. Lab. Code § 203 provides, in relevant part, that:

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

113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUBCLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 b. Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum and overtime compensation due PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory
5 rate;
- 6 c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
7 which a violation occurs and one hundred dollars (\$100) per each member of the
8 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period,
9 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
10 of costs for violation of Cal. Lab. Code § 226;
- 11 d. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 e. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197;
- 15 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
16 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
17 costs of suit.; and,
- 18 g. The wages of all terminated employees in the CALIFORNIA LABORSUB-CLASS
19 as a penalty from the due date thereof at the same rate until paid or until an action
20 therefore is commenced, in accordance with Cal. Lab. Code § 203.
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1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and,
- 4 c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
- 6 §2802.

7

8 DATED: April 4, 2022

9 **ZAKAY LAW GROUP, APLC**

10 By: 

11 Shani O. Zakay
12 Attorney for PLAINTIFF

13 **DEMAND FOR A JURY TRIAL**

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

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16 DATED: April 4, 2022

17 **ZAKAY LAW GROUP, APLC**

18 By: 

19 Shani O. Zakay
20 Attorney for PLAINTIFF

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Beach Chalet LP
 90 Grog Truppelli
 1411 Powell St.
 Emeryville, CA 94608



9590 9402 6815 1074 9829 75

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3711

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

The Beach Chalet LP

C. Date of Delivery

APR 08 2022

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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3. Service Type

- ☐ Adult Signature
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- ☐ Certified Mail®
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