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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

OMAR HAZNEDAR and PHILIP SOTO,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

NIKI INVESTMENTS, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 30-2021-01213064-CU-OE-CXC

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;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN VIOLATION
3 OF CAL. LAB. CODE §§226 and 226.2;
4 7) FAILURE TO REIMBURSE EMPLOYEES
5 FOR REQUIRED EXPENSES IN
6 VIOLATION OF CAL. LAB. CODE § 2802;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203;
9 9) VIOLATION OF THE PRIVATE
10 ATTORNEYS GENERAL ACT [LABOR
11 CODE §§ 2698 *et seq.*]

12 **DEMAND FOR A JURY TRIAL**

13 Plaintiffs Omar Haznedar and Philip Soto, individuals, (“PLAINTIFFS”), on behalf of
14 themselves and all other similarly situated current and former employees, allege on information
15 and belief, except for their own acts and knowledge which are based on personal knowledge, the
16 following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant NIKI INVESTMENTS, INC. (“DEFENDANT and/or
19 DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
20 conducted and continues to conduct substantial and regular business throughout California.

21 2. DEFENDANT operates Domino’s franchises throughout California, including at
22 the Orange County, California locations where PLAINTIFFS worked.

23 3. Plaintiff Haznedar was employed by DEFENDANT in California as a non-exempt
24 employee entitled to minimum wages, overtime pay and meal and rest periods from 2013 to May
25 of 2020.

26 4. Plaintiff Soto has been employed by DEFENDANT in California as a non-exempt
27 employee entitled to minimum wages, overtime pay and meal and rest periods from February
28 2020 to May 2021.

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

1 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
2 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
3 dollars (\$5,000,000.00).

4 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
5 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
6 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy
7 and practice which failed to lawfully compensate these employees for all their time worked.
8 DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair and deceptive
9 business practice whereby DEFENDANTS retained and continues to retain wages due to
10 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
12 DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS who have been economically injured by DEFENDANTS’ past and
14 current unlawful conduct, and all other appropriate legal and equitable relief.

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

24 8. The agents, servants and/or employees of the DEFENDANTS and each of them
25 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
26 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
27 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
28 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the

1 other DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFFS
2 and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
3 of the conduct of the DEFENDANTS' agents, servants and/or employees.

4 **THE CONDUCT**

5 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
6 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time
7 worked, meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. From time to time,
9 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without
10 paying them for all the time they were under DEFENDANTS' control. Specifically,
11 PLAINTIFFS performed work before and after the beginning of her shift, spending time under
12 DEFENDANTS' control for which they were not compensated, including time spent preparing
13 the shop for opening. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members
14 forfeited minimum wage and overtime compensation by regularly working without their time
15 being accurately recorded and without compensation at the applicable minimum wage and
16 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other
17 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
18 records.

19 10. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were
21 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
22 employee's performance.

23 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANTS. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANTS. However, when calculating the regular rate

1 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
2 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
3 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
4 incentive program to potential and new employees as part of the compensation package. However,
5 DEFENDANTS failed to include incentive compensation into the "regular rate of pay" for
6 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
7 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the "regular rate
8 of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation
9 to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANTS.

10 12. As a result of their rigorous work schedules, PLAINTIFFS and other
11 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks
12 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and
13 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal
14 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS
15 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
17 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
18 each workday in which these employees were required by DEFENDANTS to work ten (10) hours
19 of work. DEFENDANTS' policy caused PLAINTIFFS and other CALIFORNIA CLASS
20 Members to remain on-call and on-duty during what was supposed to be their off-duty meal
21 periods. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal
22 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
23 policy and practice.

24 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
25 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
26 without being provided ten (10) minute rest periods. Further, these employees were denied their
27 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
28 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between

1 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
2 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
3 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
4 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
5 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
6 remain on-duty and on-call and subject to DEFENDANTS' control in accordance with
7 DEFENDANTS' policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not
8 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and
9 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
10 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and
11 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
12 DEFENDANTS and DEFENDANTS' managers.

13 14. Under California law, every employer shall pay to each employee, on the
14 established payday for the period involved, not less than the applicable minimum wage for all
15 hours worked in the payroll period, whether the remuneration is measured by time, piece,
16 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
17 during which an employee is subject to the control of an employer and includes all the time the
18 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and
19 other CALIFORNIA CLASS Members were from time to time required to perform work for
20 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
21 breaks. DEFENDANTS failed to compensate PLAINTIFFS and other CALIFORNIA CLASS
22 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
23 As such, DEFENDANTS failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
24 the applicable minimum wage for all hours worked in a payroll period.

25 15. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time

1 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
2 the payment of the correct compensation as required by California law which allowed
3 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
4 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
5 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

6 16. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
7 Members worked during what was supposed to be their meal breaks or otherwise off the clock,
8 and/or when DEFENDANT miscalculated PLAINTIFFS' and other CALIFORNIA CLASS
9 Members' regular rate of pay, DEFENDANTS also failed to provide PLAINTIFFS and the other
10 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
11 to show, among other things, the correct time worked, including, work performed in excess of
12 eight (8) hours in a workday and/or forty (40) hours in any workweek, and the gross wages paid
13 for those periods during the pay period, and the correct penalty payments or missed meal and rest
14 periods in violation of California Labor Code Sections 226 and 226.2.

15 17. California Labor Code Section 226 requires an employer to furnish its employees
16 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
17 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
19 of the employee and only the last four digits of the employee's social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.

23 18. Aside from the violations listed herein, DEFENDANTS failed to issue to
24 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
25 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
26 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFFS and
27 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS failed to include
28 items such as "Deposit Time" into the total hours worked, thereby violating Cal. Lab. Code §

1 226(a)(2). As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
3 226.

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

15 20. In the course of their employment, PLAINTIFFS and other CALIFORNIA CLASS
16 Members as a business expense, were required by DEFENDANTS to use their own personal
17 cellular phones as a result of and in furtherance of their job duties as employees for
18 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
19 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
20 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
21 use their personal cell phones for work related issues. As a result, in the course of their
22 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
23 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
24 related to the use of their personal cellular phones all on behalf of and for the benefit of
25 DEFENDANTS.

26 21. By reason of this uniform conduct applicable to PLAINTIFFS and all
27 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
28 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the

1 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
2 calculate and record the correct overtime rate for the overtime worked by PLAINTIFFS and other
3 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour
4 rates is the DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the
5 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
6 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
7 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

8 22. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
9 take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
10 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five
11 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed
12 to provide PLAINTIFFS with a second off-duty meal period each workday in which they were
13 required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided
14 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the
15 rest break. DEFENDANTS’ policy caused PLAINTIFFS to remain on-call and on-duty during
16 what was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and
17 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
18 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with a
19 paystub that failed to accurately display PLAINTIFFS’ correct time worked and wages, as well
20 as payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab.
21 Code § 226(a). To date, DEFENDANTS have not fully paid Plaintiff Haznedar the overtime
22 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
23 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of
24 \$75,000.

25 **JURISDICTION AND VENUE**

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

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

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

8 **THE CALIFORNIA CLASS**

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

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

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

27 28. DEFENDANTS have the legal burden to establish that each and every
28 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks

missed as required by California laws. DEFENDANTS, however, as a matter of uniform and systematic 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, so as to satisfy its burden. This common business practice 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.

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

30. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all time worked;
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFFS and other members of the CALIFORNIA

1 CLASS for all time worked, including minimum wages owed and overtime wages
2 owed for work performed by these employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 iii. In the context of wage litigation, because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting their legal

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

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

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

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

1 in obtaining adequate compensation for the damages and injuries which
2 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANTS are sufficient to adequately compensate the members of the
5 CALIFORNIA CLASS for the injuries sustained;

6 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
7 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
8 with respect to the CALIFORNIA CLASS as a whole;

9 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
10 business records of DEFENDANTS; and

11 i. Class treatment provides manageable judicial treatment calculated to bring an
12 efficient and rapid conclusion to all litigation of all wage and hour related claims
13 arising out of the conduct of DEFENDANTS as to the members of the
14 CALIFORNIA CLASS.

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
22 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
24 CLASS") at any time during the period three (3) years prior to the filing of the original complaint
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
26 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
27 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
28 (\$5,000,000.00).

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

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

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

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

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

- 1 c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
- 2 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 3 statements;
- 4 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
- 5 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
- 6 California Labor Code and California regulations and the applicable California
- 7 Wage Order;
- 8 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 9 compensation for time worked, including overtime worked, under the overtime
- 10 pay requirements of California law;
- 11 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 12 conduct;
- 13 g. The proper measure of damages and penalties owed to the members of the
- 14 CALIFORNIA LABOR SUB-CLASS; and
- 15 h. Whether DEFENDANTS' conduct was willful.

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

- 18 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS
- 19 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 20 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 21 § 1194;
- 22 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 23 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS
- 24 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 25 Cal. Lab. Code §§ 1194 and 1197;
- 26 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
- 27 and the other members of the CALIFORNIA CLASS with all legally required off-
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duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABORSUB-CLASS, were non-exempt

1 employees paid on an hourly basis and paid additional non-discretionary incentive
2 wages who was subjected to the DEFENDANTS' practice and policy which failed
3 to pay the correct rate of overtime wages and total amount of wages due to the
4 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
5 as a result of DEFENDANTS' employment practices. PLAINTIFFS and the
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
8 of misconduct engaged in by DEFENDANTS; and

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

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
22 the risk of:
- 23 i. Inconsistent or varying adjudications with respect to individual members
24 of the CALIFORNIA LABOR SUB-CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA LABOR SUB-CLASS; or
- 27 ii. Adjudication with respect to individual members of the CALIFORNIA
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

1 interests of the other members not party to the adjudication or substantially
2 impair or impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR
5 SUB-CLASS, making appropriate class-wide relief with respect to the
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
7 failed to pay all wages due for all time worked by the members of the
8 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

1 be dispositive of the interests of the other members not parties to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests;

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 206.5, 246, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

15 50. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
16 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANTS.

19 51. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
20 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
21 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

22 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
24 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
25 each workday in which a second off-duty meal period was not timely provided for each ten (10)
26 hours of work.

1 53. PLAINTIFFS further demand on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided as required by law.

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

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

15 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
16 to, and do, seek such relief as may be necessary to restore to them the money and property which
17 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
19 business practices, including earned but unpaid wages.

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

24 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
27 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

6 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**
7 **DEFENDANTS)**

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

11 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
13 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
14 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

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

27 65. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
3 pay.

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

1 74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
3 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
4 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the
5 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
7 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

25 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
27 of implementing a uniform policy and practice that denied accurate compensation to
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all

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

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

9 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
11 full compensation for all overtime worked.

12 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
13 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
14 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and
15 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid
16 collective bargaining agreement that would preclude the causes of action contained herein this
17 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the
18 CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable,
19 non-waivable rights provided by the State of California.

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

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

1 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’S
2 business records and witnessed by employees.

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

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

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

23 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS’

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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
10 **DEFENDANTS)**

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

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

27 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

11 **(Cal. Lab. Code §§ 226 and 226.2)**

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

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

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

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

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

99. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an “accurate itemized” statement in writing showing:

- a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and
- b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

100. When DEFENDANTS did not accurately record PLAINTIFFS’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANTS failed to include items such as “Deposit Time”

1 into the total hours worked, thereby violating Cal. Lab. Code § 226(a)(2). As a result, from time
2 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
3 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

15 **SEVENTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

18 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
19 **DEFENDANTS)**

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

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

24
25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
28

1 though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful.

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

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

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

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

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

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

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

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

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

110. There was no definite term in Plaintiff Haznedar’s or any CALIFORNIA LABOR SUB-CLASS Members’ employment contract.

111. Cal. Lab. Code § 203 provides:

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

6 112. The employment of Plaintiff Haznedar and many CALIFORNIA LABOR SUB-
7 CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these
8 employees who missed meal and rest breaks, as required by law.

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

15 **NINTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§2698 et seq.)**

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

19 114. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 115. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
26 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
27 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
28 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.

1 116. PLAINTIFFS, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of May 21, 2020 until
6 the present (the "AGGRIEVED EMPLOYEES").

7 117. On May 21, 2021, PLAINTIFFS gave written notice by certified mail to the Labor
8 and Workforce Development Agency (the "Agency") and the employer of the specific
9 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
10 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
11 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
12 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
13 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
14 EMPLOYEES as herein defined.

15 118. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANTS (a) failed to properly record and pay
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
18 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
19 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
20 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
21 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
22 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,
23 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory
24 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as
25 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
26 State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES.
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly
3 and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum wages, overtime wages, unreimbursed expenses, and other
21 compensation due to PLAINTIFFS and the other members of the CALIFORNIA
22 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
23 CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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

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

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

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

4. On all claims:

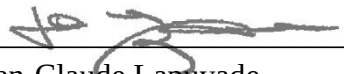
a. An award of interest, including prejudgment interest at the legal rate;

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

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
and/or §2802.

DATED: July 27, 2021

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: July 27, 2021

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for Plaintiffs

EXHIBIT 1



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Jean-Claude Lapuyade, Esq.
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May 21, 2021

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

NIKI INVESTMENTS, INC.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt No.
7021 0350 0001 8165 1873

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 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:

This office represents ONER HAZNEDAR (“Haznedar”) and PHILIP SOTO (“Soto”) (collectively “Plaintiffs”) and other aggrieved employees in a proposed class and representative action against NIKI INVESTMENTS, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiffs and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff Haznedar was employed by Defendant in California from 2013 to May of 2020. Plaintiff Soto was employed by Defendant in California from February of 2020 to May of 2021. Plaintiffs were paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendant failed to, among other things, provide Plaintiffs, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiffs contend that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiffs contend that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC
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Facsimile: (619) 599-8291

Attorneys for Plaintiffs

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

ONER HAZNEDAR and PHILIP SOTO,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

NIKI INVESTMENTS, INC., a California
Corporation; 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 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiffs Oner Haznedar and Philip Soto, individuals, (“PLAINTIFFS”), on behalf of
2 themselves and all other similarly situated current and former employees, allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant NIKI INVESTMENTS, INC. (“DEFENDANT and/or
7 DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business throughout California.

9 2. DEFENDANT operates Domino’s franchises throughout California, including at
10 the Orange County, California locations where PLAINTIFFS worked.

11 3. Plaintiff Haznedar was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from 2013 to May
13 of 2020.

14 4. Plaintiff Soto was employed by DEFENDANT in California as a non-exempt
15 employee entitled to minimum wages, overtime pay and meal and rest periods from February of
16 2020 to May of 2021.

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

24 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy
27 and practice which failed to lawfully compensate these employees for all their time worked.
28 DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair and deceptive
business practice whereby DEFENDANTS retained and continues to retain wages due to

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

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

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

23 **THE CONDUCT**

24 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
25 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time
26 worked, meaning the time during which an employee is subject to the control of an employer,
27 including all the time the employee is suffered or permitted to work. From time to time,
28 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without

1 paying them for all the time they were under DEFENDANTS’ control. Specifically,
2 PLAINTIFFS performed work before and after the beginning of their shift, spending time under
3 DEFENDANTS’ control for which they were not compensated, including time spent preparing
4 the shop for opening. Further, DEFENDANTS from time to time required PLAINTIFFS and
5 CALIFORNIA CLASS Members to clock out at the end of their shifts and continue working to
6 perform work-related tasks. As a result, the PLAINTIFFS and other CALIFORNIA CLASS
7 Members forfeited minimum wage and overtime compensation by regularly working without their
8 time being accurately recorded and without compensation at the applicable minimum wage and
9 overtime rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFFS and other
10 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business
11 records.

12 10. State law provides that employees must be paid overtime at one-and-one-half times
13 their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS Members were
14 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
15 employee’s performance.

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

1 of pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation
2 to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANTS.

3 12. As a result of their rigorous work schedules, PLAINTIFFS and other
4 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks
5 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and
6 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal
7 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS
8 Members were required to perform work as ordered by DEFENDANTS for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
10 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period
11 each workday in which these employees were required by DEFENDANTS to work ten (10) hours
12 of work. DEFENDANTS’ policy caused PLAINTIFFS and other CALIFORNIA CLASS
13 Members to remain on-call and on-duty during what was supposed to be their off-duty meal
14 periods. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal
15 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate
16 policy and practice.

17 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and
18 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
19 without being provided ten (10) minute rest periods. Further, these employees were denied their
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
21 hours, 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, and a first, second and third rest period of at least ten (10) minutes for
23 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
24 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and
25 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
26 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to
27 remain on-duty and on-call and subject to DEFENDANTS’ control in accordance with
28 DEFENDANTS’ policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not

1 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and
2 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
3 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and
4 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
5 DEFENDANTS and DEFENDANTS' managers.

6 14. Under California law, every employer shall pay to each employee, on the
7 established payday for the period involved, not less than the applicable minimum wage for all
8 hours worked in the payroll period, whether the remuneration is measured by time, piece,
9 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
10 during which an employee is subject to the control of an employer and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and
12 other CALIFORNIA CLASS Members were from time to time required to perform work for
13 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
14 breaks. DEFENDANTS failed to compensate PLAINTIFFS and other CALIFORNIA CLASS
15 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
16 As such, DEFENDANTS failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members
17 the applicable minimum wage for all hours worked in a payroll period.

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

27 16. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS
28 Members worked during what was supposed to be their meal breaks or otherwise off the clock,

1 and/or when DEFENDANT miscalculated PLAINTIFFS' and other CALIFORNIA CLASS
2 Members' regular rate of pay, DEFENDANTS also failed to provide PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
4 to show, among other things, the correct time worked, including, work performed in excess of
5 eight (8) hours in a workday and/or forty (40) hours in any workweek, and the gross wages paid
6 for those periods during the pay period, and the correct penalty payments or missed meal and rest
7 periods in violation of California Labor Code Sections 226 and 226.2.

8 17. California Labor Code Section 226 requires an employer to furnish its employees
9 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
10 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
11 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
12 of the employee and only the last four digits of the employee's social security number or an
13 employee identification number other than a social security number, (8) the name and address of
14 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
15 period and the corresponding number of hours worked at each hourly rate by the employee.

16 18. Aside from the violations listed herein, DEFENDANTS failed to issue to
17 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor
18 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
19 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFFS and
20 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS failed to include
21 items such as "Deposit Time" into the total hours worked, thereby violating Cal. Lab. Code §
22 226(a)(2). As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other
23 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
24 226.

25 19. DEFENDANTS as a matter of corporate policy, practice and procedure,
26 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS
27 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
28 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
2 are required to indemnify employees for all expenses incurred in the course and scope of their
3 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them
7 to be unlawful."

8 20. In the course of their employment, PLAINTIFFS and other CALIFORNIA CLASS
9 Members as a business expense, were required by DEFENDANTS to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
12 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
13 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
14 use their personal cell phones for work related issues. As a result, in the course of their
15 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
16 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
17 related to the use of their personal cellular phones all on behalf of and for the benefit of
18 DEFENDANTS.

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

22. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for their rest and meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period each workday in which they were required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the rest break. DEFENDANTS' policy caused PLAINTIFFS to remain on-call and on-duty during what was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with a paystub that failed to accurately display PLAINTIFFS' correct time worked and wages, as well as payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFFS the overtime compensation still owed to them or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

12 27. DEFENDANTS, as a matter of company policy, practice and procedure, and in
13 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and
15 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
16 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,
17 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
18 this work and permitted or suffered to permit this work.

19 28. DEFENDANTS have the legal burden to establish that each and every
20 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks
21 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and
22 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
23 PERIOD and still fails to have in place a policy or practice to ensure that each and every
24 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
25 common business practice applicable to each and every CALIFORNIA CLASS Member can be
26 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
27 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
28 elements of this claim.

1 29. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 30. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
6 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
7 policies, practices and procedures that failed to pay all wages due the
8 CALIFORNIA CLASS for all time worked;
- 9 b. Committing an act of unfair competition in violation of the California Unfair
10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
11 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
12 members;
- 13 c. Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
15 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
16 members with necessary expenses incurred in the discharge of their job duties; and
- 17 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that uniformly and systematically
20 failed to record and pay PLAINTIFFS and other members of the CALIFORNIA
21 CLASS for all time worked, including minimum wages owed and overtime wages
22 owed for work performed by these employees.

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

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

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA CLASS will apply
3 uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFFS are typical of the claims of each
5 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members
6 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on
7 an hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
8 policy which failed to provide the legally required meal and rest periods to the
9 CALIFORNIA CLASS and thereby systematically underpaid compensation to
10 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic
11 injury as a result of DEFENDANTS’ employment practices. PLAINTIFFS, like
12 all the other members of the CALIFORNIA CLASS, were subjected to the uniform
13 employment practices of DEFENDANTS and was a non-exempt employee paid
14 on an hourly basis and paid additional non-discretionary incentive wages who was
15 subjected to the DEFENDANTS’ practice and policy which failed to pay the
16 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
17 worked by the CALIFORNIA CLASS and thereby systematically under pays
18 overtime compensation to the CALIFORNIA CLASS. PLAINTIFFS and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and
- 22 d. The representative PLAINTIFFS will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who are
24 competent and experienced in Class Action litigation. There are no material
25 conflicts between the claims of the representative PLAINTIFFS and the members
26 of the CALIFORNIA CLASS that would make class certification inappropriate.
27 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
28 CALIFORNIA CLASS Members.

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

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

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

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

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

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

26 c. Common questions of law and fact exist as to the members of the CALIFORNIA
27 CLASS, with respect to the practices and violations of California law as listed
28 above, and predominate over any question affecting only individual

CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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

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

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

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

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

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to

1 result in the absence of certification of this action pursuant to Cal. Code of
2 Civ. Proc. § 382.

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

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

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANTS; and

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

7 34. DEFENDANTS maintain records from which the Court can ascertain and identify
8 by job title each of DEFENDANTS' employees who as have been systematically, intentionally
9 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
10 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles
11 of similarly situated employees when they have been identified.

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

21 36. DEFENDANTS, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
25 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
26 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
27 benefit of this work, required employees to perform this work and permitted or suffered to permit
28 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-

1 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
2 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
3 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR
4 SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 14 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
15 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
16 missed meal and rest breaks in violation of the California Labor Code and
17 California regulations and the applicable California Wage Order;
- 18 b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
19 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
20 thirty (30) minute meal breaks and rest periods;
- 21 c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members
22 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
23 statements;
- 24 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
25 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
26 California Labor Code and California regulations and the applicable California
27 Wage Order;

- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS' conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which

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

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

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

21 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

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

10 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 246, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
14 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
15 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
16 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

23 49. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
24 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFFS, and
25 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
26 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
27 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
28 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
wrongfully withheld.

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

5 51. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
6 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

8 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
10 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
11 each workday in which a second off-duty meal period was not timely provided for each ten (10)
12 hours of work.

13 53. PLAINTIFFS further demand on behalf of themselves and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
15 not timely provided as required by law.

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

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

27 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
28 to, and do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
3 business practices, including earned but unpaid wages.

4 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
5 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
6 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
7 engaging in any unlawful and unfair business practices in the future.

8 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
9 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
10 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
11 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
12 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
13 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
14 unlawful and unfair business practices.

15 **SECOND CAUSE OF ACTION**

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

18 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**
19 **DEFENDANTS)**

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

23 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
25 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
26 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

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

11 65. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
15 pay.

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

22 67. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
24 the correct minimum wage compensation for their time worked for DEFENDANTS.

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

28 69. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA

1 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
2 which are presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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THIRD CAUSE OF ACTION

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

**(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

73. PLAINTIFFS, 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.

74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

75. 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.

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

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

78. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
2 to pay these employees the correct applicable overtime wages for all overtime worked.

3 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
5 of implementing a uniform policy and practice that denied accurate compensation to
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all
7 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or
8 forty (40) hours in any workweek.

9 80. In committing these violations of the California Labor Code, DEFENDANTS
10 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
11 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
12 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the
13 payment of all earned wages, and other benefits in violation of the California Labor Code, the
14 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

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

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

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

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

25 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
26 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
27 interest, statutory costs, as well as the assessment of any statutory penalties against
28 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all
DEFENDANTS)**

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

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

27 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

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

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code §§ 226 and 226.2)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all
10 DEFENDANTS)**

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

14 98. Cal. Labor Code § 226 provides that an employer must furnish employees with an
15 "accurate itemized" statement in writing showing:

- 16 a. Gross wages earned;
- 17 b. Total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment of
19 overtime under subdivision (a) of Section 515 or any applicable order of the
20 Industrial Welfare Commission;
- 21 c. The number of piece rate units earned and any applicable piece rate if the employee
22 is paid on a piece-rate basis;
- 23 d. All deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item;
- 25 e. Net wages earned;
- 26 f. The inclusive dates of the period for which the employee is paid;
- 27 g. The name of the employee and his or her social security number, except that by
28 January 1, 2008, only the last four digits of his or her social security number or an

employee identification number other than a social security number may be shown on the itemized statement;

h. The name and address of the legal entity that is the employer; and

i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

99. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an “accurate itemized” statement in writing showing:

a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and

b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

100. When DEFENDANTS did not accurately record PLAINTIFFS’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* Specifically, DEFENDANTS failed to include items such as “Deposit Time” into the total hours worked, thereby violating Cal. Lab. Code § 226(a)(2). As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)

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

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

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

104. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their

1 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
2 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
3 use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice
4 and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
5 members for expenses resulting from using their personal cellular phones for DEFENDANTS
6 within the course and scope of their employment for DEFENDANTS. These expenses were
7 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'
8 conduct to assert any waiver of this expectation. Although these expenses were necessary
9 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
10 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
11 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
12 laws and regulations of California.

13 105. PLAINTIFFS therefore demands reimbursement for expenditures or losses
14 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
15 job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with
16 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN DUE**

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

20 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
21 **DEFENDANTS)**

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

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

26 As used in this article:(a) "Wages" includes all amounts for labor performed by
27 employees of every description, whether the amount is fixed or ascertained by the
28 standard of time, task, piece, Commission basis, or other method of calculation. (b)
"Labor" includes labor, work, or service whether rendered or performed under

contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

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

111. Cal. Lab. Code § 203 provides:

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

112. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

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

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANTS 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 DEFENDANTS' violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, unreimbursed expenses, and other compensation due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the

CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs