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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ISAAC AYALA, an individual, on behalf of
 himself, and on behalf of all persons similarly
 situated,

Plaintiffs,

v.

INTERNATIONAL COFFEE & TEA, LLC, a
 Delaware limited liability company;
 INTERNATIONAL COFFEE & TEA
 HOLDINGS, LLC, a Delaware limited liability
 company; and DOES 1-50, Inclusive,

Defendants.

Case No: 23STCV28784

**FIRST AMENDED 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.

FILED
 Superior Court of California
 County of Los Angeles

01/24/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351.
10) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant INTERNATIONAL COFFEE & TEA, LLC (“Defendant International Coffee & Tea”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant INTERNATIONAL COFFEE & TEA HOLDINGS, LLC (“Defendant International Coffee & Tea Holdings”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant International Coffee & Tea and Defendant International Coffee & Tea Holdings were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

1 4. DEFENDANTS operate coffee shops throughout the state of California, including
2 the county of Los Angeles, where PLAINTIFF worked.

3 5. PLAINTIFF was employed by DEFENDANT in California from June of 2022 to
4 August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
5 required meal and rest periods and payment of minimum and overtime wages due for all time
6 worked.

7 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
8 defined as all persons who are or previously were employed by Defendant International Coffee &
9 Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-
10 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
11 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
12 (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
13 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

14 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
15 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
16 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
17 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
18 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
19 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
20 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
21 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
22 other members of the CALIFORNIA CLASS who have been economically injured by
23 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
24 relief.

25 8. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
27 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
28 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
3 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
4 inclusive, are responsible in some manner for one or more of the events and happenings that
5 proximately caused the injuries and damages hereinafter alleged.

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

14 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
15 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
16 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
17 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
18 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
19 at all relevant times.

20 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
21 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
22 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
23 employee a wage less than the minimum fixed by California state law, and as such, are subject to
24 civil penalties for each underpaid employee.

25 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
26 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
27 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.
28

13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and other members of the CALIFORNIA CLASS who has been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

14. 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 PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

16. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time

1 worked at each hourly rate and/or failing to adhere to Labor Code Section 226(a)(1)-(9).
2 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
3 and full payment for all time worked as required by California law which allows DEFENDANT
4 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
5 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
6 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

8 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
10 meaning the time during which an employee is subject to the control of an employer, including
11 all the time the employee is suffered or permitted to work. From time to time during the CLASS
12 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
13 without paying them for all the time they were under DEFENDANT's control. Specifically,
14 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
15 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
16 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
17 Members forfeited minimum wage and overtime compensation by regularly working without their
18 time being accurately recorded and without compensation at the applicable minimum wage and
19 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
21 records.

22 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
23 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
24 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
25 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
27 more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second

1 off-duty meal period for some workdays in which these employees are required by DEFENDANT
2 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
3 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
4 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
5 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
6 duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS
7 Members with legally required meal breaks is evidenced by DEFENDANT’s business records.
8 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
9 without additional compensation and in accordance with DEFENDANT’s strict corporate policy
10 and practice.

11 **B. Rest Period Violations**

12 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
13 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
14 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
15 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
16 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
17 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
18 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
19 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
20 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
21 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
22 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
23 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate
24 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied
25 their proper rest periods by DEFENDANT and DEFENDANT’s managers.

26 **C. Unreimbursed Business Expenses**

27 20. DEFENDANT as a matter of corporate policy, practice, and procedure,
28 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF

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

10 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
11 CALIFORNIA CLASS Members to use their personal vehicles as a result of and in furtherance
12 of their job duties, including but not limited to performing work-related duties. However,
13 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
14 Members for the use of their personal vehicles. As a result, in the course of their employment
15 with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
16 unreimbursed business expenses that included, but were not limited to, costs related to the use of
17 their personal vehicles.

18 **D. Wage Statement Violations**

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

27 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for

1 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
2 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
3 accurate wage statements which failed to show, among other things, all deductions, the total hours
4 worked and all applicable hourly rates in effect during the pay period and the corresponding
5 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
6 meal and rest periods.

7 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
9 Cal. Lab. Code § 226.

10 25. As a result, DEFENDANT issued PLAINTIFF and other members of the
11 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
12 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
13 payroll error due to clerical or inadvertent mistake.

14 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

15 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
16 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
17 for all hours worked.

18 27. During the CLASS PERIOD, from time-to-time DEFENDANT required
19 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
20 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to
21 work while off-the-clock.

22 28. DEFENDANT directed and directly benefited from the undercompensated off-the-
23 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

24 29. DEFENDANT controlled the work schedules, duties, and protocols, applications,
25 assignments, and employment conditions of PLAINTIFF and the other members of the
26 CALIFORNIA CLASS.

27 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other
28 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
2 wages earned and owed for all the work they performed.

3 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
4 exempt employees, subject to the requirements of the California Labor Code.

5 32. DEFENDANT's policies and practices deprived PLAINTIFF and the other
6 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
7 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
8 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
9 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
10 pay.

11 33. DEFENDANT knew or should have known that PLAINTIFF and the other
12 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

13 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
14 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
15 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
16 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
17 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
18 records.

19 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
20 **and Redeemed Sick Pay**

21 35. From time to time during the CLASS PERIOD, DEFENDANT failed and
22 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
23 Members for their overtime and double time hours worked, meal and rest period premiums, and
24 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
25 forfeited wages due to them for working overtime without compensation at the correct overtime
26 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
27 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
28

1 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
2 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

3 36. State law provides that employees must be paid overtime at one-and-one-half times
4 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
5 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
6 employee's performance.

7 37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
8 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
9 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
10 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
11 paid on an hourly basis with bonus compensation when the employees met the various
12 performance goals set by DEFENDANTS.

13 38. However, from time to time, when calculating the regular rate of pay in those pay
14 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
15 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
16 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
17 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
18 rather than just all non-overtime hours worked. Management and supervisors described the
19 incentive/bonus program to potential and new employees as part of the compensation package.
20 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
21 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
22 in a systematic underpayment of overtime and double time compensation, meal and rest period
23 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
24 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
25 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
26 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
27 not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as
28 articulated herein, by failing to include the incentive compensation as part of the "regular rate of

1 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
2 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

3 39. In violation of the applicable sections of the California Labor Code and the
4 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
5 matter of company policy, practice, and procedure, intentionally and knowingly failed to
6 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
7 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
8 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
9 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
10 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
11 CLASS PERIOD should be adjusted accordingly.

12 **G. Violations for Untimely Payment of Wages**

13 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
14 CALIFORNIA CLASS members were entitled to timely payment of wages during their
15 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
16 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
17 meal period premium wages, and rest period premium wages within permissible time period.

18 41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
19 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
20 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
21 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
22 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
23 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
24 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
25 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

26 42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
27 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
28 employment ended during the CLASS PERIOD.

1 **H. Sick Pay Violations**

2 43. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
3 July 1, 2015, works in California for the same employer for 30 or more days within a year from
4 the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANT failed to have a policy or practice in place that provided
7 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
8 leave.

9 44. California Labor Code Section 246(i) requires an employer to furnish its
10 employees with written wage statements setting forth the amount of paid sick leave available.
11 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
12 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
13 forth the amount of paid sick leave available.

14 **I. Unlawful Deductions**

15 45. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
18 violated Labor Code § 221.

19 **J. Timekeeping Manipulation**

20 46. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
21 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
22 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
24 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
26 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
27 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
28 missed rest breaks.

1 47. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

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

11 49. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and
13 benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy
14 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
15 all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
16 records.

17 **K. Unlawful Rounding Practices**

18 50. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
22 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28 time to time, forfeited compensation for their time worked by working without their time being

1 accurately recorded and without compensation at the applicable overtime rates.

2 51. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
3 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
4 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
5 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
7 off-duty meal break.

8 **L. Tip Pooling**

9 52. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
10 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
11 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service
12 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity, tips and/or
13 service charges to its food and beverage bills. These gratuity, tips and/or service charges
14 reasonably appear to be gratuity, tips and/or service charges for the service staff. It is typical and
15 customary in the food and beverage industry that establishments impose gratuity, tips and/or
16 service charges on the food and beverage bill. Thus, when customers paid these charges, it is
17 reasonable for them to have believed they were gratuity, tips and/or service charges to be paid to
18 the service staff. Indeed, because many of these charges are depicted to customers, and the custom
19 in the food and beverage industry that gratuity, tips and/or service charges are paid for food and
20 beverage service, customers paid these charges reasonably believing they were remitted to the
21 service staff. However, DEFENDANTS have not remitted the total proceeds of these gratuity,
22 tips and/or service charges to the non-managerial employees who serve the food and beverages.
23 Instead, DEFENDANTS have a policy and practice of using a portion of these gratuity, tips and/or
24 service charges to pay managers or other non-service employees. As a result, PLAINTIFF and
25 CALIFORNIA CLASS Members have not received the total proceeds of the gratuity, tips and/or
26 service charges, to which they are entitled to under California law.

27 53. DEFENDANTS are generally in the business of owning and operating a restaurant
28 and coffee shop. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other

1 CALIFORNIA CLASS Members were in the “chain of service” and earned gratuity, tips and/or
2 service charges based on their service for their customers. However, PLAINTIFF and
3 CALIFORNIA CLASS Members were forced to forfeit portions of their gratuity, tips and/or
4 service charges, which said gratuities were kept by DEFENDANTS’ employees who were not in
5 the chain of service from which the gratuity, tips and/or service charges resulted. PLAINTIFF
6 and other CALIFORNIA CLASS Members contend that any gratuity, tips and/or service charges
7 kept by DEFENDANTS’ non-service employees were illegal and in violation of California law
8 because PLAINTIFF and other CALIFORNIA CLASS Members provided the service for to
9 whom the gratuity, tips and/or service charges should have been paid.

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

18 55. Although tip pooling is not expressly prohibited by the Labor Code, employees
19 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
20 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
21 violated and continue to violate the legal requirements for handling pooled tips.

22 **M. Reporting Time Violations**

23 56. Further, DEFENDANTS from time to time required PLAINTIFF and other
24 CALIFORNIA CLASS Members to report to work, but were furnished less than half their
25 scheduled shift’s worth of work and were not paid reporting time pay as required by Cal. Code
26 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, “(A) Each workday
27 an employee is required to report for work and does report, but is not put to work or is furnished
28 less than half said employee's usual or scheduled day's work, the employee shall be paid for half

1 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
2 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”
3 In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
4 Members to engage in additional work, this sometimes resulted in a second reporting for work in
5 a single workday. In such a circumstance of a second reporting for work in a single workday,
6 DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs.,
7 tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work a second
8 time in any one workday and is furnished less than two (2) hours of work on the second reporting,
9 said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall
10 be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

11 **N. Split-Shift Premium and Overtime Violations**

12 57. During the CLASS PERIOD, DEFENDANT also systematically failed to record and
13 pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount of wages due for split-
14 shift premiums. The applicable Industrial Welfare Commission Wage Orders define a “split-shift”
15 as a “work schedule, which is interrupted by non-paid, non- working, periods established by the
16 employer, other than bona fide rest or meal periods.” The Industrial Welfare Commission Wage
17 Orders further provide, “When an employee works a split shift, one (1) hour’s pay at the minimum
18 wage shall be paid in addition to the minimum wage for that workday, except when the employee
19 resides at the place of employment.” DEFENDANT, from time-to-time, required PLAINTIFF and
20 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and
21 unlawfully failed to pay PLAINTIFF and the CLASS Members split-shift premium wages and
22 failed to pay PLAINTIFF and CLASS Members the correct overtime compensation for hours
23 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFF
24 and the CLASS Members were underpaid during their employment with DEFENDANT.

25 58. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
26 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
27 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which they were
2 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
4 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
5 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
6 breaks without additional compensation and in accordance with DEFENDANT'S strict corporate
7 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
8 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
9 PLAINTIFF for required business expenses related to the use of his personal vehicle, on behalf
10 of and in furtherance of his employment with DEFENDANT. Moreover, DEFENDANT also
11 failed to pay PLAINTIFF all tips owed to him. DEFENDANT failed to pay PLAINTIFF all
12 applicable split-shift premiums owed to him during his employment. To date, DEFENDANT has
13 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
14 them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy
15 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **CLASS ACTION ALLEGATIONS**

17 59. PLAINTIFF brings this Class Action on behalf of himself, and a California class
18 defined as all persons who are or previously were employed by Defendant International Coffee
19 & Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-
20 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
21 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
22 (the "CLASS PERIOD").

23 60. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
24 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
25 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
26 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
27 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
28 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

1 61. The members of the class are so numerous that joinder of all class members is
2 impractical.

3 62. Common questions of law and fact regarding DEFENDANT's conduct, including
4 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
5 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
6 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
7 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
8 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
9 at least minimum wage and overtime, exist as to all members of the class and predominate over
10 any questions affecting solely any individual members of the class. Among the questions of law
11 and fact common to the class are:

- 12 a. Whether DEFENDANT maintained legally compliant meal period policies and
13 practices;
- 14 b. Whether DEFENDANT maintained legally compliant rest period policies and
15 practices;
- 16 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members accurate premium payments for missed meal and rest periods;
- 18 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members accurate overtime wages;
- 20 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members at least minimum wage for all hours worked;
- 22 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
23 CLASS Members for required business expenses;
- 24 g. Whether DEFENDANT issued legally compliant wage statements;
- 25 h. Whether DEFENDANT committed an act of unfair competition by systematically
26 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for all time worked;
- 28

- 1 i. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record all meal and rest breaks missed by PLAINTIFF and other
3 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
4 of this work, required employees to perform this work and permits or suffers to
5 permit this work;
- 6 j. Whether DEFENDANT committed an act of unfair competition in violation of the
7 UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 63. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANT's conduct and actions alleged herein.

11 64. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
12 PLAINTIFF have the same interests as the other members of the class.

13 65. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 66. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 67. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
18 interest of the other CALIFORNIA CLASS Members.

19 68. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

23 69. The questions of law and fact common to the CALIFORNIA CLASS Members
24 predominate over any questions affecting only individual members, including legal and factual
25 issues relating to liability and damages.

26 70. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of
2 the class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory, and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
5 will create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the
7 CALIFORNIA CLASS which would establish incompatible standards of conduct
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
10 which would as a practical matter be dispositive of the interests of the other
11 members not party to the adjudication or substantially impair or impeded their
12 ability to protect their interests.

13 71. Class treatment provides manageable judicial treatment calculated to bring an
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
15 the conduct of DEFENDANT.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

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

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

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

75. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

77. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally mandated meal and rest periods and the required amount of compensation for missed meal and rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary business expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in 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.

78. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 79. By the conduct alleged herein, DEFENDANT's practices were also unfair and
4 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 84. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **Failure To Pay Minimum Wages**

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

17 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

21 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
22 for DEFENDANT's willful and intentional violations of the California Labor Code and the
23 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
24 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

1 90. 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 less wage than
3 the minimum so fixed is unlawful.

4 91. 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 92. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
7 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
8 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
10 CALIFORNIA CLASS.

11 93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
13 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

21 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
23 minimum wage compensation for their time worked for DEFENDANT.

24 96. During the CLASS PERIOD, PLAINTIFF and the other members of the
25 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
26 failure to pay all earned wages.

27 97. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

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

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

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

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

1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
2 recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure To Pay Overtime Compensation**

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

6 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

15 103. 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.

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

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

24 106. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
25 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
26 they worked, including overtime work.

27 107. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of

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

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

12 109. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
14 overtime compensation for their time worked for DEFENDANT.

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

23 111. During the CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
25 constituting a failure to pay all earned wages.

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

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly
2 required to work, and did in fact work overtime, and did in fact work overtime as to which
3 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
4 records and witnessed by employees.

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

10 114. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA CLASS were undercompensated for their time worked.
12 DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
14 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
15 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages
16 for their overtime worked.

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

25 116. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

1 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
2 employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or 202, and
3 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
4 203, which penalties are sought herein. DEFENDANT’s conduct as alleged herein was willful,
5 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
6 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

14 118. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
15 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
16 required by the applicable Wage Order and Labor Code. The nature of the work performed by
17 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
18 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
19 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often
20 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
21 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
22 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
23 DEFENDANT’s business records. Further, DEFENDANT failed to provide PLAINTIFF and
24 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
25 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
26 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without
27 additional compensation and in accordance with DEFENDANT’s strict corporate policy and
28 practice.

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

122. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide

1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANT's business records.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **Failure To Reimburse Employees For Required Expenses**

13 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

24 127. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
25 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
26 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
27 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
28 members for expenses which included, but were not limited to, their personal vehicles as a result
of and in furtherance of their job duties, including but not limited to performing work-related
duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by

1 DEFENDANTS to use their personal cell phones and personal vehicles to execute their essential
2 job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure
3 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses
4 resulting from using their personal vehicles for DEFENDANT within the course and scope of
5 their employment for DEFENDANT. These expenses were necessary to complete their principal
6 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
7 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
8 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
9 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
10 required to do under the laws and regulations of California.

11 128. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
12 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
13 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
14 statutory rate and costs under Cal. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

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

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

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than 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.

131. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

132. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

133. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct

wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA 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 PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

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

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

As used in this article:

- (d) "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.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

136. 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."

137. 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.

138. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

139. 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.

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

141. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

NINTH CAUSE OF ACTION

FAILURE TO PAY STATUTORY GRATUITIES

(Cal. Lab. Code § 351 et seq.)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all

Defendants)

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

143. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial employees the total proceeds of gratuities added to customers' bills constitutes a violation of California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes

1 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated
2 California Labor Code Section 351 in not remitting to the non-managerial service employees the
3 total gratuities that were charged to customers.

4 144. As a proximate result of the aforementioned violations, PLAINTIFF and
5 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
6 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
7 interest, penalties, expenses and costs of suit.

8 **TENTH CAUSE OF ACTION**

9 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

10 **[Cal. Lab. Code §§ 2698, et seq.]**

11 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

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

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

23 147. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, bring this Representative Action on behalf of the State of California with respect to himself
26 and all non-exempt employees who worked for DEFENDANT in California during the time
27 period of November 22, 2022, until the present (the “AGGRIEVED EMPLOYEES”).
28

148. On November 22, 2023, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

PRAYER FOR RELIEF

1. On behalf of the CALIFORNIA CLASS:

1 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

2 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
3 unlawfully withheld from compensation due to PLAINTIFF and the other members
4 of the CALIFORNIA CLASS; and

5 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT's violations due to
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

8 2. On behalf of the CALIFORNIA CLASS:

9 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
10 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
11 pursuant to Cal. Code of Civ. Proc. § 382;

12 b. Compensatory damages, according to proof at trial, including compensatory
13 damages for overtime compensation due to PLAINTIFF and the other members of
14 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
15 thereon at the statutory rate;

16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
17 the applicable IWC Wage Order;

18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
19 which a violation occurs and one hundred dollars (\$100) per each member of the
20 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
21 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
22 violation of Cal. Lab. Code § 226

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

26 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
27 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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

1 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
2 Attorneys General Act of 2004.

3 4. On all claims:

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

8
9
10 DATED: January 24, 2024

ZAKAY LAW GROUP, APLC

11
12 By: 
13 Shani O. Zakay
14 Attorney for PLAINTIFF

15
16
17 **DEMAND FOR A JURY TRIAL**

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

19
20 DATED: January 24, 2024

ZAKAY LAW GROUP, APLC

21
22 By: 
23 Shani O. Zakay
24 Attorney for PLAINTIFF

EXHIBIT 1



Client # 66901

November 22, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

INTERNATIONAL COFFEE & TEA, LLC

c/o C T Corporation System

330 N. Brand Blvd, Ste 700

Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1466 9051 58

INTERNATIONAL COFFEE & TEA HOLDINGS, LLC

c/o C T Corporation System

330 N. Brand Blvd, Ste 700

Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1466 9051 65

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ISAAC AYALA ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant INTERNATIONAL COFFEE & TEA, LLC ("Defendant International Coffee & Tea") and Defendant INTERNATIONAL COFFEE & TEA HOLDINGS, LLC ("Defendant International Coffee & Tea Holdings") (hereinafter, collectively, "Defendants"). Plaintiff was employed by Defendants from June of 2022 to August of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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jlapuyade@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ISAAC AYALA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

INTERNATIONAL COFFEE & TEA, LLC, a
Delaware limited liability company;
INTERNATIONAL COFFEE & TEA
HOLDINGS, LLC, a Delaware limited liability
company; 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;

- 1 6) FAILURE TO REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO PROVIDE ACCURATE
8 ITEMIZED STATEMENTS IN
9 VIOLATION OF CAL. LAB. CODE § 226;
10 9) FAILURE TO PROVIDE GRATUITIES IN
11 VIOLATION OF CAL. LAB. CODE § 351.

12 **DEMAND FOR A JURY TRIAL**

13 PLAINTIFF ISAAC AYALA (“PLAINTIFF”), an individual, on behalf of himself and all
14 other similarly situated current and former employees, allege on information and belief, except for
15 his own acts and knowledge which are based on personal knowledge, the following:

16 **PRELIMINARY ALLEGATIONS**

17 1. Defendant INTERNATIONAL COFFEE & TEA, LLC (“Defendant International
18 Coffee & Tea”) is a Delaware limited liability company that at all relevant times mentioned herein
19 conducted and continues to conduct substantial and regular business throughout California.

20 2. Defendant INTERNATIONAL COFFEE & TEA HOLDINGS, LLC (“Defendant
21 International Coffee & Tea Holdings”) is a Delaware limited liability company that at all relevant
22 times mentioned herein conducted and continues to conduct substantial and regular business
23 throughout California.

24 3. Defendant International Coffee & Tea and Defendant International Coffee & Tea
25 Holdings were the joint employers of PLAINTIFF as evidenced by the documents issued to
26 PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore
27 jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
28 “DEFENDANT.”

DEFENDANTS operate coffee shops throughout the state of California, including
the county of Los Angeles, where PLAINTIFF worked.

///

1 5. PLAINTIFF was employed by DEFENDANT in California from June of 2022 to
2 August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
3 required meal and rest periods and payment of minimum and overtime wages due for all time
4 worked.

5 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
6 defined as all persons who are or previously were employed by Defendant International Coffee &
7 Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-
8 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
9 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
10 (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
11 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
13 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
14 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
15 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
16 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
17 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
18 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
19 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
20 other members of the CALIFORNIA CLASS who have been economically injured by
21 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
22 relief.

23 8. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

12 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
13 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
14 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
16 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
17 at all relevant times.

18 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
19 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
20 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
21 employee a wage less than the minimum fixed by California state law, and as such, are subject to
22 civil penalties for each underpaid employee.

23 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
24 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
25 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

26 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
27 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
28 other members of the CALIFORNIA CLASS who has been economically injured by

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

3 **JURISDICTION AND VENUE**

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

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
22 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
23 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
24 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
25 applicable hourly rates in effect during the pay periods and the corresponding amount of time
26 worked at each hourly rate and/or failing to adhere to Labor Code Section 226(a)(1)-(9).
27 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
28 and full payment for all time worked as required by California law which allows DEFENDANT

1 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
2 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
3 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

5 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
6 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer, including
8 all the time the employee is suffered or permitted to work. From time to time during the CLASS
9 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
10 without paying them for all the time they were under DEFENDANT's control. Specifically,
11 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
12 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
13 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
14 Members forfeited minimum wage and overtime compensation by regularly working without their
15 time being accurately recorded and without compensation at the applicable minimum wage and
16 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
17 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
18 records.

19 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
20 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
21 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
22 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
24 more than five (5) hours during some shifts without receiving a meal break. Further,
25 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
26 off-duty meal period for some workdays in which these employees are required by DEFENDANT
27 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
28 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-

1 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
2 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
3 duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS
4 Members with legally required meal breaks is evidenced by DEFENDANT’s business records.
5 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
6 without additional compensation and in accordance with DEFENDANT’s strict corporate policy
7 and practice.

8 **B. Rest Period Violations**

9 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
10 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
11 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
12 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
13 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
14 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
15 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
17 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
18 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate
21 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied
22 their proper rest periods by DEFENDANT and DEFENDANT’s managers.

23 **C. Unreimbursed Business Expenses**

24 20. DEFENDANT as a matter of corporate policy, practice, and procedure,
25 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
26 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
27 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
28 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers

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

7 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
8 CALIFORNIA CLASS Members to use their personal vehicles as a result of and in furtherance
9 of their job duties, including but not limited to performing work-related duties. However,
10 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
11 Members for the use of their personal vehicles. As a result, in the course of their employment
12 with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
13 unreimbursed business expenses that included, but were not limited to, costs related to the use of
14 their personal vehicles.

15 **D. Wage Statement Violations**

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

24 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
26 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
27 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
28 accurate wage statements which failed to show, among other things, all deductions, the total hours

1 worked and all applicable hourly rates in effect during the pay period and the corresponding
2 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
3 meal and rest periods.

4 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
6 Cal. Lab. Code § 226.

7 25. As a result, DEFENDANT issued PLAINTIFF and other members of the
8 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
9 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
10 payroll error due to clerical or inadvertent mistake.

11 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
13 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
14 for all hours worked.

15 27. During the CLASS PERIOD, from time-to-time DEFENDANT required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
17 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to
18 work while off-the-clock.

19 28. DEFENDANT directed and directly benefited from the undercompensated off-the-
20 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

21 29. DEFENDANT controlled the work schedules, duties, and protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

24 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed.

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1 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
2 exempt employees, subject to the requirements of the California Labor Code.

3 32. DEFENDANT's policies and practices deprived PLAINTIFF and the other
4 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
5 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
6 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
7 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
8 pay.

9 33. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

11 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
13 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
15 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
16 records.

17 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
18 **and Redeemed Sick Pay**

19 35. From time to time during the CLASS PERIOD, DEFENDANT failed and
20 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
21 Members for their overtime and double time hours worked, meal and rest period premiums, and
22 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
23 forfeited wages due to them for working overtime without compensation at the correct overtime
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
25 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
26 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
27 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

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1 36. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 37. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
8 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
9 paid on an hourly basis with bonus compensation when the employees met the various
10 performance goals set by DEFENDANTS.

11 38. However, from time to time, when calculating the regular rate of pay in those pay
12 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
20 in a systematic underpayment of overtime and double time compensation, meal and rest period
21 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
22 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
23 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
25 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
26 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
27 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
28 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

1 39. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
5 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
6 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
7 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
8 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
9 CLASS PERIOD should be adjusted accordingly.

10 **G. Violations for Untimely Payment of Wages**

11 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their
13 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
15 meal period premium wages, and rest period premium wages within permissible time period.

16 41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
18 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
19 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
20 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
21 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
22 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
23 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

24 42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
25 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
26 employment ended during the CLASS PERIOD.

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1 **H. Sick Pay Violations**

2 43. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
3 July 1, 2015, works in California for the same employer for 30 or more days within a year from
4 the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANT failed to have a policy or practice in place that provided
7 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
8 leave.

9 44. California Labor Code Section 246(i) requires an employer to furnish its
10 employees with written wage statements setting forth the amount of paid sick leave available.
11 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
12 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
13 forth the amount of paid sick leave available.

14 **I. Unlawful Deductions**

15 45. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
18 violated Labor Code § 221.

19 **J. Timekeeping Manipulation**

20 46. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
21 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
22 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
24 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
26 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
27 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
28 missed rest breaks.

1 47. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

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

11 49. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and
13 benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy
14 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
15 all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
16 records.

17 **K. Unlawful Rounding Practices**

18 50. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
22 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28 time to time, forfeited compensation for their time worked by working without their time being

1 accurately recorded and without compensation at the applicable overtime rates.

2 51. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
3 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
4 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
5 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
7 off-duty meal break.

8 **L. Tip Pooling**

9 52. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
10 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
11 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service
12 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity, tips and/or
13 service charges to its food and beverage bills. These gratuity, tips and/or service charges
14 reasonably appear to be gratuity, tips and/or service charges for the service staff. It is typical and
15 customary in the food and beverage industry that establishments impose gratuity, tips and/or
16 service charges on the food and beverage bill. Thus, when customers paid these charges, it is
17 reasonable for them to have believed they were gratuity, tips and/or service charges to be paid to
18 the service staff. Indeed, because many of these charges are depicted to customers, and the custom
19 in the food and beverage industry that gratuity, tips and/or service charges are paid for food and
20 beverage service, customers paid these charges reasonably believing they were remitted to the
21 service staff. However, DEFENDANTS have not remitted the total proceeds of these gratuity,
22 tips and/or service charges to the non-managerial employees who serve the food and beverages.
23 Instead, DEFENDANTS have a policy and practice of using a portion of these gratuity, tips and/or
24 service charges to pay managers or other non-service employees. As a result, PLAINTIFF and
25 CALIFORNIA CLASS Members have not received the total proceeds of the gratuity, tips and/or
26 service charges, to which they are entitled to under California law.

27 53. DEFENDANTS are generally in the business of owning and operating a restaurant
28 and coffee shop. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other

1 CALIFORNIA CLASS Members were in the “chain of service” and earned gratuity, tips and/or
2 service charges based on their service for their customers. However, PLAINTIFF and
3 CALIFORNIA CLASS Members were forced to forfeit portions of their gratuity, tips and/or
4 service charges, which said gratuities were kept by DEFENDANTS’ employees who were not in
5 the chain of service from which the gratuity, tips and/or service charges resulted. PLAINTIFF
6 and other CALIFORNIA CLASS Members contend that any gratuity, tips and/or service charges
7 kept by DEFENDANTS’ non-service employees were illegal and in violation of California law
8 because PLAINTIFF and other CALIFORNIA CLASS Members provided the service for to
9 whom the gratuity, tips and/or service charges should have been paid.

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

18 55. Although tip pooling is not expressly prohibited by the Labor Code, employees
19 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
20 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
21 violated and continue to violate the legal requirements for handling pooled tips.

22 **M. Reporting Time Violations**

23 56. Further, DEFENDANTS from time to time required PLAINTIFF and other
24 CALIFORNIA CLASS Members to report to work, but were furnished less than half their
25 scheduled shift’s worth of work and were not paid reporting time pay as required by Cal. Code
26 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, “(A) Each workday
27 an employee is required to report for work and does report, but is not put to work or is furnished
28 less than half said employee's usual or scheduled day's work, the employee shall be paid for half

1 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
2 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”
3 In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
4 Members to engage in additional work, this sometimes resulted in a second reporting for work in
5 a single workday. In such a circumstance of a second reporting for work in a single workday,
6 DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs.,
7 tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work a second
8 time in any one workday and is furnished less than two (2) hours of work on the second reporting,
9 said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall
10 be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

11 **N. Split-Shift Premium and Overtime Violations**

12 57. During the CLASS PERIOD, DEFENDANT also systematically failed to record and
13 pay PLAINTIFF and CALIFORNIA CLASS Members the correct amount of wages due for split-
14 shift premiums. The applicable Industrial Welfare Commission Wage Orders define a “split-shift”
15 as a “work schedule, which is interrupted by non-paid, non- working, periods established by the
16 employer, other than bona fide rest or meal periods.” The Industrial Welfare Commission Wage
17 Orders further provide, “When an employee works a split shift, one (1) hour’s pay at the minimum
18 wage shall be paid in addition to the minimum wage for that workday, except when the employee
19 resides at the place of employment.” DEFENDANT, from time-to-time, required PLAINTIFF and
20 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and
21 unlawfully failed to pay PLAINTIFF and the CLASS Members split-shift premium wages and
22 failed to pay PLAINTIFF and CLASS Members the correct overtime compensation for hours
23 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFF
24 and the CLASS Members were underpaid during their employment with DEFENDANT.

25 58. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
26 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
27 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which they were
2 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
4 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
5 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
6 breaks without additional compensation and in accordance with DEFENDANT'S strict corporate
7 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
8 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
9 PLAINTIFF for required business expenses related to the use of his personal vehicle, on behalf
10 of and in furtherance of his employment with DEFENDANT. Moreover, DEFENDANT also
11 failed to pay PLAINTIFF all tips owed to him. DEFENDANT failed to pay PLAINTIFF all
12 applicable split-shift premiums owed to him during his employment. To date, DEFENDANT has
13 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
14 them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy
15 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **CLASS ACTION ALLEGATIONS**

17 59. PLAINTIFF brings this Class Action on behalf of himself, and a California class
18 defined as all persons who are or previously were employed by Defendant International Coffee
19 & Tea and/or Defendant International Coffee & Tea Holdings in California and classified as non-
20 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
21 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
22 (the "CLASS PERIOD").

23 60. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
24 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
25 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
26 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
27 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
28 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

1 61. The members of the class are so numerous that joinder of all class members is
2 impractical.

3 62. Common questions of law and fact regarding DEFENDANT's conduct, including
4 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
5 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
6 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
7 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
8 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
9 at least minimum wage and overtime, exist as to all members of the class and predominate over
10 any questions affecting solely any individual members of the class. Among the questions of law
11 and fact common to the class are:

- 12 a. Whether DEFENDANT maintained legally compliant meal period policies and
13 practices;
- 14 b. Whether DEFENDANT maintained legally compliant rest period policies and
15 practices;
- 16 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members accurate premium payments for missed meal and rest periods;
- 18 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members accurate overtime wages;
- 20 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members at least minimum wage for all hours worked;
- 22 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
23 CLASS Members for required business expenses;
- 24 g. Whether DEFENDANT issued legally compliant wage statements;
- 25 h. Whether DEFENDANT committed an act of unfair competition by systematically
26 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for all time worked;
- 28

- 1 i. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record all meal and rest breaks missed by PLAINTIFF and other
3 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
4 of this work, required employees to perform this work and permits or suffers to
5 permit this work;
- 6 j. Whether DEFENDANT committed an act of unfair competition in violation of the
7 UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 63. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANT's conduct and actions alleged herein.

11 64. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
12 PLAINTIFF have the same interests as the other members of the class.

13 65. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 66. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 67. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
18 interest of the other CALIFORNIA CLASS Members.

19 68. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

23 69. The questions of law and fact common to the CALIFORNIA CLASS Members
24 predominate over any questions affecting only individual members, including legal and factual
25 issues relating to liability and damages.

26 70. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of
2 the class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory, and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
5 will create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the
7 CALIFORNIA CLASS which would establish incompatible standards of conduct
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
10 which would as a practical matter be dispositive of the interests of the other
11 members not party to the adjudication or substantially impair or impeded their
12 ability to protect their interests.

13 71. Class treatment provides manageable judicial treatment calculated to bring an
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
15 the conduct of DEFENDANT.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

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

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

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

5 75. By the conduct alleged herein, DEFENDANT has engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
9 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to
10 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
11 constitute unfair competition, including restitution of wages wrongfully withheld.

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

17 77. By the conduct alleged herein, DEFENDANT's practices were deceptive and
18 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
19 mandated meal and rest periods and the required amount of compensation for missed meal and
20 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
21 necessary business expenses incurred, due to a systematic business practice that cannot be
22 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
25 restitution of wages wrongfully withheld.

26
27 ///
28

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

5 79. By the conduct alleged herein, DEFENDANT's practices were also unfair and
6 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
8 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

6 85. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
9 engaging in any unlawful and unfair business practices in the future.

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

20 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

24 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT's willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.
28

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

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

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

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

13 93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

23 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
25 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

21 100. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
22 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

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

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

103. 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.

104. Cal. Lab. Code § 510 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 amounts specified by law.

105. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum and 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.

106. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

14 109. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
16 overtime compensation for their time worked for DEFENDANT.

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

25 111. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
27 constituting a failure to pay all earned wages.
28

1 112. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly
5 required to work, and did in fact work overtime, and did in fact work overtime as to which
6 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
7 records and witnessed by employees.

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

13 114. DEFENDANT knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA CLASS were undercompensated for their time worked.
15 DEFENDANT systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
17 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
18 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages
19 for their overtime worked.

20 115. In performing the acts and practices herein alleged in violation of California labor
21 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
22 and provide them with the requisite compensation, DEFENDANT acted and continues to act
23 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
25 consequences to them, and with the despicable intent of depriving them of their property and
26 legal rights, and otherwise causing them injury in order to increase company profits at the
27 expense of these employees.
28

116. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS request recovery of overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

1 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
2 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without
3 additional compensation and in accordance with DEFENDANT's strict corporate policy and
4 practice.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **Failure To Provide Required Rest Periods**

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

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

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

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

1 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
2 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
3 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
5 periods is evidenced by DEFENDANT's business records.

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

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

14 **SIXTH CAUSE OF ACTION**

15 **Failure To Reimburse Employees For Required Expenses**

16 **(Cal. Lab. Code §§ 2802)**

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

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

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

22 An employer shall indemnify his or her employee for all necessary expenditures or
23 losses incurred by the employee in direct consequence of the discharge of his or her
24 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.

25 127. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
26 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
27 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
28 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for expenses which included, but were not limited to, their personal vehicles as a result
2 of and in furtherance of their job duties, including but not limited to performing work-related
3 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
4 DEFENDANTS to use their personal cell phones and personal vehicles to execute their essential
5 job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure
6 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses
7 resulting from using their personal vehicles for DEFENDANT within the course and scope of
8 their employment for DEFENDANT. These expenses were necessary to complete their principal
9 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
10 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
11 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
12 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
13 required to do under the laws and regulations of California.

14 128. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
15 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
16 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
17 statutory rate and costs under Cal. Lab. Code § 2802.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure To Provide Accurate Itemized Statements**

20 **(Cal. Lab. Code § 226)**

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

22 129. PLAINTIFF, 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.

25 130. Cal. Labor Code § 226 provides that an employer must furnish employees with an
26 "accurate itemized" statement in writing showing:

27 a. Gross wages earned,
28

- 1 b. (2) total hours worked by the employee, except for any employee whose
2 compensation is solely based on a salary and who is exempt from payment of
3 overtime under subdivision (a) of Section 515 or any applicable order of the
4 Industrial Welfare Commission,
5 c. the number of piece-rate units earned and any applicable piece rate if the employee
6 is paid on a piece-rate basis,
7 d. all deductions, provided that all deductions made on written orders of the employee
8 may be aggregated and shown as one item,
9 e. net wages earned,
10 f. the inclusive dates of the period for which the employee is paid,
11 g. the name of the employee and his or her social security number, except that by
12 January 1, 2008, only the last four digits of his or her social security number of an
13 employee identification number other than social security number may be shown
14 on the itemized statement,
15 h. the name and address of the legal entity that is the employer, and
16 i. all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.

18 131. When DEFENDANT did not accurately record PLAINTIFF'S and other
19 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
20 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated
21 Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other
22 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to
23 show, among other things, all deductions, the accurate gross wages earned, net wages earned,
24 the total hours worked and all applicable hourly rates in effect during the pay period and the
25 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
26 payments or missed meal and rest periods.

132. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

133. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA 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 PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

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

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

As used in this article:

- (d) "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.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

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

4 137. Cal. Lab. Code § 202 provides, in relevant part, that:
5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 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.

10 138. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS
11 Members’ employment contract.

12 139. Cal. Lab. Code § 203 provides:
13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
15 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.

16 140. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
17 terminated, and DEFENDANT has not tendered payment of wages to these employees who
18 missed meal and rest breaks, as required by law.

19 141. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
20 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to
21 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
22 employees who terminated employment during the CLASS PERIOD and demands an accounting
23 and payment of all wages due, plus interest and statutory costs as allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PAY STATUTORY GRATUITIES**

3 **(Cal. Lab. Code § 351 et seq.)**

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

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

9 143. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
10 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
11 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair
12 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes
13 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated
14 California Labor Code Section 351 in not remitting to the non-managerial service employees the
15 total gratuities that were charged to customers.

16 144. As a proximate result of the aforementioned violations, PLAINTIFF and
17 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
18 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
19 interest, penalties, expenses and costs of suit.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
27 b. An order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

- 1 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
2 unlawfully withheld from compensation due to PLAINTIFF and the other members
3 of the CALIFORNIA CLASS; and
4 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA CLASS:

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

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1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 6

7 DATED: November 22, 2023

ZAKAY LAW GROUP, APLC

9 By: 
10 Shani O. Zakay
11 Attorney for PLAINTIFF

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13
14
15 **DEMAND FOR A JURY TRIAL**

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

17
18 DATED: November 22, 2023

ZAKAY LAW GROUP, APLC

19
20 By: 
21 Shani O. Zakay
22 Attorney for PLAINTIFF

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28

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Int'l Coffee & Tea Holdings, LLC
c/o CT Corp. System
330 N Brand Blvd, Ste 700
Glendale, CA 91203



9590 9402 8151 3030 1455 33

2. Article Number (Transfer from service label)

7 0710 5270 1466 9051 65

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

NOV 27 2023

002-561

11/22 Delivery Service

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☐ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery	
☐ Insured Mail	
☐ Insured Mail Restricted Delivery (over \$500)	

Domestic Return Receipt

EXHIBIT 1

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

international coffee & Tea, LLC
c/o CT Corp. System
330 N Brand Blvd, Ste 700
Glendale, CA 91203



9590 9402 8151 3030 1455 26

2. Article Number (Transfer from service label)

1 0710 5270 1466 9051 58

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

NOV 27 2023

002-561

11/27 Delivery Service

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restrict Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT A