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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 MATTHEW SHACHNO, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 MARRIOTT INTERNATIONAL, INC., a
20 Corporation; and Does 1 through 50,
21 Inclusive,

22 Defendants.

Case No. 37-2020-00024021-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code §§
201, 202, 203, 204, 210, 226(a), 226.7, 351,
510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802.

1 Plaintiff Matthew Shachno ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Marriott International, Inc.
8 ("DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Marriott International, Inc. ("DEFENDANT") is a Corporation that at
24 all relevant times mentioned herein conducted and continues to conduct substantial business in
25 the state of California.

26 5. DEFENDANT manages and operates hotels and resorts.

1 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
2 employee entitled to meal and rest periods from May of 2012 to December 31, of 2019.
3 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
4 exempt employee paid in whole or in part on an hourly basis and received banquet service
5 charges from DEFENDANT.

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

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512,
17 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Order(s). Based upon
18 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
19 within the meaning of Labor Code § 2699, *et seq.*

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

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

11 THE CONDUCT

12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. From time to time DEFENDANT
16 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the
17 time they were under DEFENDANT's control. Specifically, DEFENDANT required
18 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
19 meal break. PLAINTIFF was from time to time interrupted by work assignments, including
20 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF
21 and AGGRIEVED EMPLOYEES were required by DEFENDANT to clock out of
22 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
23 as required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF
24 and AGGRIEVED EMPLOYEES to clock out of DEFENDANT's timekeeping system and
25 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As
26 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage,
27 overtime wage compensation, and meal break wages, by working without their time being
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1 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
2 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
3 worked, is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working
5 without their time being accurately recorded and without compensation at the applicable
6 minimum wage and overtime rates. DEFENDANT knew or should have known that
7 PLAINTIFF and other AGGRIEVED EMPLOYEES were working off the clock and were not
8 being paid their correct minimum wage and overtime compensation.

9 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
10 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
11 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
12 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
13 time worked, meaning the time during which an employee was subject to the control of an
14 employer, including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT required these employees to work off the clock without paying them for all the
16 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
17 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
18 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
19 time worked by working without their time being accurately recorded and without compensation
20 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
21 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
22 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
23 1197, and 1197.1.

24 13. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were from time to time unable to take off duty meal breaks and were not fully
26 relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were
27 required to perform work as ordered by DEFENDANT for more than five (5) hours during a
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1 shift without receiving an off-duty meal break from time to time. Further, DEFENDANT failed
2 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
3 from time to time in which these employees were required by DEFENDANT to work ten (10)
4 hours of work from time to time. PLAINTIFF and the other AGGRIEVED EMPLOYEES
5 therefore forfeited meal breaks without the correct meal premium compensation and in
6 accordance with DEFENDANT's corporate policy and practice.

7 14. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
8 were also required from time to time to work in excess of four (4) hours without being provided
9 ten (10) minute rest periods. Further, these employees were from time to time denied their first
10 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
11 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
12 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
13 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
14 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
15 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
16 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
17 managers. Additionally, the applicable California Wage Order requires employers to provide
18 employees with off-duty rest periods, which the California Supreme Court defined as time
19 during which an employee is relieved from all work related duties and free from employer
20 control. In so doing, the Court held that the requirement under California law that employers
21 authorize and permit all employees to take rest period means that employers must relieve
22 employees of all duties and relinquish control over how employees spend their time which
23 includes control over the locations where employees may take their rest period. Employers
24 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
25 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
26 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
27 Defendant's rule which required PLAINTIFF and other AGGRIEVED EMPLOYEES could not
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1 leave the work premises during their rest period.

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

21 16. DEFENDANT is generally in the business of owning and operating hotels,
22 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
23 banquet services to large groups, such as wedding parties and other banquet events. During the
24 PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were in the "chain of
25 service" and earned gratuities based on their service for their customers. However, PLAINTIFF
26 and AGGRIEVED EMPLOYEES were forced to forfeit portions of their gratuities, which said
27 gratuities were kept by DEFENDANT and their agents who were not in the chain of service
28 from which the gratuity resulted. PLAINTIFF and other AGGRIEVED EMPLOYEES contend

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

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

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

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

2 20. In the course of their employment PLAINTIFFS and other AGGRIEVED
3 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
4 personal cellular phones as a result of and in furtherance of their job duties as employees for
5 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
6 associated with the use of their personal cellular phones for DEFENDANT's benefit.
7 Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by
8 DEFENDANT to use their personal cell phones for work related issues. Additionally,
9 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to wear uniforms,
10 including shirts and hats bearing DEFENDANT's insignia but failed to reimburse these
11 employees for the costs of maintaining the uniforms, including but not limited to, cleaning
12 costs, in violation of the Labor code and the IWC Wage Orders. As a result, in the course of
13 their employment with DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES
14 incurred unreimbursed business expenses which included, but were not limited to, costs related
15 to the use of their personal cellular phones all on behalf of and for the benefit of
16 DEFENDANT.

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

1 22. By reason of this conduct applicable to PLAINTIFF and the AGGRIEVED
2 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
3 to accurately calculate and record the correct overtime rate for the overtime worked by
4 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
5 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
6 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
7 calculate and/or pay all required overtime compensation for work performed by the
8 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
9 promulgated thereunder as herein alleged.

10 23. All of the conduct and violations alleged herein occurred during the PAGA
11 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
13 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
14 AJDAR 12157 (Certified for Publication 12/19/18).

15
16 **JURISDICTION AND VENUE**

17 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10.

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

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

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

4 **(By PLAINTIFF and Against All Defendants)**

5 26. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-25,
6 supra, as though fully set forth at this point.

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

17 28. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 himself and all individuals who are or previously were employed by DEFENDANT in
21 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
22 the time period of March 10, 2019 until a date as determined by the Court (the "PAGA
23 PERIOD").

24 29. On March 10, 2020, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
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1 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
2 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
3 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
4 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 30. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
8 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
9 to pay overtime wages, (e) failed to pay wages when due, (f) failed to reimburse employees for
10 required expenses, and (g) failed to provide gratuities, all in violation of the applicable Labor
11 Code sections listed in Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512,
12 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage Order(s), and
13 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
14 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act
15 of 2004 as the representative of the State of California for the illegal conduct perpetrated on
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17
18 **PRAYER FOR RELIEF**

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

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.
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3 Dated: July 13, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
4 LLP

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6 By: /s/ Norman Blumenthal
7 Norman B. Blumenthal
8 Attorneys for Plaintiff
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EXHIBIT 1

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1004

March 10, 2020

CA2062

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Marriott International, Inc.
Certified Mail # 70192280000189178472
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Marriott International, Inc. in California and classified as non-exempt employees during the time period of March 10, 2019 until a date as determined by the Court. Our offices represent Plaintiff Matthew Shachno (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Marriott International, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from May of 2012 to December 31, 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Further, Defendant caused Plaintiff and Aggrieved Employees to forfeit gratuities left for them by customers to Defendant’s agents who provided no service to the customers that resulted in the gratuity. Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. As a result, Defendant violated Labor Code § 351 and the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District, Division Two) by causing Plaintiff and other Aggrieved Employees

to forfeit their gratuities. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ *Nicholas J. De Blouw*

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 MATTHEW SHACHNO, an individual, on
11 behalf of himself and on behalf of all persons
similarly situated,

12 Plaintiff,

13 vs.

14 MARRIOTT INTERNATIONAL, INC., a
15 Corporation; and Does 1 through 50, Inclusive,

16 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Matthew Shachno (“PLAINTIFFS”), an individual, on behalf of himself and
2 all other similarly situated current and former employees, alleges on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. Defendant Marriott International, Inc. (“DEFENDANT”) is a Corporation that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California.

9 2. DEFENDANT manages and operates hotels and resorts.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to meal and rest periods from May of 2012 to December 31, of 2019.
12 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
13 exempt employee paid in whole or in part on an hourly basis and received banquet service
14 charges from DEFENDANT.

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

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

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

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

23 THE CONDUCT

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
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1 all the time the employee is suffered or permitted to work. From time to time DEFENDANT
2 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for
3 all the time they were under DEFENDANT's control. Specifically, DEFENDANT required
4 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
5 meal break. PLAINTIFF were from time to time interrupted by work assignments, including
6 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF
7 and CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
8 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
9 as required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF
10 and CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
11 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As
12 a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
13 overtime wage compensation, and meal break wages, by working without their time being
14 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
15 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
16 time worked, is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and
17 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation
18 by working without their time being accurately recorded and without compensation at the
19 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
20 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were
21 not being paid their correct minimum wage and overtime compensation.

22 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
23 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
24 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
26 all time worked, meaning the time during which an employee was subject to the control of an
27 employer, including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT required these employees to work off the clock without paying them for all the
2 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
3 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
4 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
5 Members forfeited time worked by working without their time being accurately recorded and
6 without compensation at the applicable minimum wage and overtime wage rates. To the extent
7 that the time worked off the clock did not qualify for overtime premium payment,
8 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
9 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

10 10. As a result of their rigorous work schedules, PLAINTIFF and other
11 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
12 and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA
13 CLASS Members were required to perform work as ordered by DEFENDANT for more than
14 five (5) hours during a shift without receiving an off-duty meal break from time to time.
15 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members
16 with a second off-duty meal period from time to time in which these employees were required
17 by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other
18 CALIFORNIA CLASS Members therefore forfeited meal breaks without the correct meal
19 premium compensation and in accordance with DEFENDANT's strict corporate policy and
20 practice.

21 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
22 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
23 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
24 from time to time denied their first rest periods of at least ten (10) minutes for some shifts
25 worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
26 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
27 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.

1 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
2 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
5 Order requires employers to provide employees with off-duty rest periods, which the California
6 Supreme Court defined as time during which an employee is relieved from all work related
7 duties and free from employer control. In so doing, the Court held that the requirement under
8 California law that employers authorize and permit all employees to take rest period means that
9 employers must relieve employees of all duties and relinquish control over how employees
10 spend their time which includes control over the locations where employees may take their rest
11 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
12 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
13 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and was
14 unlawful based on Defendant's rule which required PLAINTIFF and other CALIFORNIA
15 CLASS Members could not leave the work premises during their rest period.

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

8 13. DEFENDANT is generally in the business of owning and operating hotels,
9 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
10 banquet services to large groups, such as wedding parties and other banquet events. During the
11 CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
12 were in the “chain of service” and earned gratuities based on their service for their customers.
13 However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of
14 their gratuities, which said gratuities were kept by DEFENDANT and their agents who were
15 not in the chain of service from which the gratuity resulted. PLAINTIFF and other
16 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANT were
17 illegal and in violation of California law because PLAINTIFF and other CALIFORNIA CLASS
18 Members, not DEFENDANT, provided the service for to whom the gratuity should have been
19 paid.

20 14. California Labor Code § 351 establishes the requirements for an employer
21 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
22 employees. California Labor Code § 351 expressly prohibits employers and their agents from
23 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e)
24 defines the term “gratuity” as including any money that has been paid or given or left for an
25 employee by a patron of a business over and above the actual amount due the business for
26 services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code
27 § 353 requires employers to keep accurate records of all gratuities they receive, directly or
28

1 indirectly.

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

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

19 17. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
20 Members as a business expense, were required by DEFENDANT to use their own personal
21 cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT’s benefit.
24 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
25 DEFENDANT to use their personal cell phones for work related issues. Additionally,
26 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to wear uniforms,
27 including shirts and hats bearing DEFENDANT’s insignia but failed to reimburse these
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1 employees for the costs of maintaining the uniforms, including but not limited to, cleaning
2 costs, in violation of the Labor code and the IWC Wage Orders. As a result, in the course of
3 their employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
4 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
5 related to the use of their personal cellular phones all on behalf of and for the benefit of
6 DEFENDANT.

7 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
8 other members of the CALIFORNIA CLASS with complete and accurate wage statements
9 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
10 Code § 226 provides that every employer shall furnish each of his or her employees with an
11 accurate itemized wage statement in writing showing, among other things, gross wages earned
12 and all applicable hourly rates in effect during the pay period and the corresponding amount of
13 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
14 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
15 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
16 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
17 statements which violated Cal. Lab. Code § 226.

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

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

16
17 **JURISDICTION AND VENUE**

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

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

1 **THE CALIFORNIA CLASS**

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

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

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

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

3 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
6 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
7 deceptively having in place company policies, practices and procedures
8 that uniformly and systematically failed to record and pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS for all time worked,
10 including minimum wages owed and overtime wages owed for work
11 performed by these employees;
- 12 (b) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 unlawfully, unfairly, and/or deceptively having in place a company policy,
15 practice and procedure that failed to correctly calculate overtime
16 compensation due to PLAINTIFF and the members of the CALIFORNIA
17 CLASS;
- 18 (c) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members;
- 22 (d) Committing an act of unfair competition in violation of the UCL, by
23 failing to provide the PLAINTIFF and the other members of the
24 CALIFORNIA CLASS with all gratuities in violation of Cal. Lab. Code
25 Section 351; and,
- 26 (e) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
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1 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
2 the CALIFORNIA CLASS members with necessary expenses incurred in
3 the discharge of their job duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2
3 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

- 21 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
22 overtime compensation to members of the CALIFORNIA LABOR SUB-
23 CLASS in violation of the California Labor Code and California
24 regulations and the applicable California Wage Order;
- 25 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;

- 1 (c) Whether DEFENDANT failed to accurately record the applicable
2 overtime rates for all overtime worked PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS;
- 4 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with legally
6 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 7 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS with accurate
9 itemized wage statements;
- 10 (f) Whether DEFENDANT has engaged in unfair competition by the
11 above-listed conduct;
- 12 (g) The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA LABOR SUB-CLASS; and,
- 14 (h) Whether DEFENDANT's conduct was willful.

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

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
18 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
19 CLASS the correct overtime pay for which DEFENDANT is liable
20 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS the correct minimum wage pay for which
24 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 25 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFF and the other members of the CALIFORNIA CLASS with
27 all the correct pay for meal period violations and the legally required rest
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breaks;

- (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment;
- (f) Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS all gratuities; and,
- (g) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

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

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

1 (c) The claims of the representative PLAINTIFF are typical of the claims of
2 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
3 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
4 was a non-exempt employee paid on an hourly basis who was subjected
5 to the DEFENDANT's practice and policy described herein. PLAINTIFF
6 sustained economic injury as a result of DEFENDANT's employment
7 practices. PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS were and are similarly or identically harmed by the same
9 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
10 in by DEFENDANT; and,

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

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

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

25 1) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA LABOR SUB-CLASS which
27 would establish incompatible standards of conduct for the parties
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opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

- 26 (a) The questions of law and fact common to the CALIFORNIA LABOR
27 SUB-CLASS predominate over any question affecting only individual
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CALIFORNIA LABOR SUB-CLASS Members;

- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

40. 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.

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

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

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

Cal. Bus. & Prof. Code § 17203.

43. By the conduct alleged herein, DEFENDANT has engaged and continues to

1 engage in a business practice which violates California law, including but not limited to, the
2 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
3 including Sections 204, 226.7, 351, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
4 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
5 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
6 competition, including restitution of wages wrongfully withheld.

7 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages wrongfully
12 withheld.

13 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
15 other members of the CALIFORNIA CLASS, overtime and minimum wages owed, meal and
16 rest break penalties, failed to accurately to record the applicable rate of all overtime worked,
17 failed to pay all gratuities, failed to provide the required amount of overtime compensation, and
18 failed to reimburse business expenses incurred due to a systematic miscalculation of the
19 overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
20 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
21 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
22 § 17203, including restitution of wages wrongfully withheld.

23 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANT.

27 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
28

1 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
2 the correct meal period premiums for meal period violations and failed to provide mandatory
3 rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

9 49. PLAINTIFF further demands on behalf of himself and on behalf of each
10 CALIFORNIA CLASS member, one (1) hour at their regular rate of pay for each workday in
11 which an off duty paid rest period was not timely provided as required by law.

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

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

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

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

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

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

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

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

17 **and Against All DEFENDANT)**

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

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

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

1 58. 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 59. 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 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
7 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
8 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
9 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
10 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

22 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
25 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
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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 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 204, 510, 1194 and 1198]

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

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

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

71. 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.

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

1 specified by law.

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

6 74. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
7 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
8 amount of overtime worked and correct applicable overtime rate for the amount of overtime
9 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
10 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
12 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
13 all overtime worked.

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

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

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

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

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Period Premium Pay**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

9 86. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
10 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
11 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
12 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
13 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
14 duties for the legally required off-duty meal periods. As a result of their rigorous work
15 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
16 time to time not fully relieved of duty by DEFENDANT for their meal periods. As a result,
17 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
18 forfeited meal break premium pay without in accordance with DEFENDANT's strict corporate
19 policy and practice.

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

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

1 suit.

2
3 **FIFTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

27 92. As a proximate result of the aforementioned violations, PLAINTIFF and
28

1 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
3 suit.

4
5 **SIXTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 226]**

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

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

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

15 (1) gross wages earned,

16 (2) total hours worked by the employee, except for any employee whose compensation
17 is solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
19 Commission,

20 (3) the number of piecerate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,

22 (4) all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,

24 (5) net wages earned,

25 (6) the inclusive dates of the period for which the employee is paid,

26 (7) the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number or an
28

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

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

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

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

9 98. Cal. Lab. Code § 200 provides that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

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

17 99. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
18 an employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

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

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

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

102. 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

1 therefor is commenced; but the wages shall not continue for more than 30 days.

2 103. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
3 Members terminated and DEFENDANT has not tendered payment of overtime wages as
4 required by law.

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

11 **EIGHTH CAUSE OF ACTION**

12 **For Failure To Pay Statutory Gratuities**

13 **[Cal. Lab. Code §§ 351, *et seq.*]**

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

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

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

27 107. As a proximate result of the aforementioned violations, PLAINTIFF and
28

1 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
2 to proof at trial, including the loss of gratuities to which they were entitled. and seek all
3 wages earned and due, interest, penalties, expenses and costs of suit.

4
5 **NINTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2802]**

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

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

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

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

17 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
18 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for required expenses incurred in the discharge of their job duties for
20 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
21 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
22 limited to, costs related to using their personal cellular phones all on behalf of and for the
23 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS
24 Members were required by DEFENDANT to use their personal cell phones to respond to
25 work related issues. Additionally, DEFENDANT required PLAINTIFF and CALIFORNIA
26 CLASS Members to wear uniforms, including shirts and hats bearing DEFENDANT's
27 insignia but failed to reimburse these employees for the costs of maintaining the uniforms,

1 including but not limited to, cleaning costs, in violation of the Labor code and the IWC
2 Wage Orders. DEFENDANT's uniform policy, practice and procedure was to not
3 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
4 expenses resulting from using their personal cellular phones for DEFENDANT within the
5 course and scope of their employment for DEFENDANT. These expenses were necessary
6 to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
7 conduct to assert any waiver of this expectation. Although these expenses were necessary
8 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
9 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
10 LABOR SUB-CLASS members for these expenses as an employer is required to do under
11 the laws and regulations of California.

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

16
17 **PRAYER FOR RELIEF**

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

- 20 1. On behalf of the CALIFORNIA CLASS:
- 21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
22 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 23 B) An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 25 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
26 withheld from compensation due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS; and,
- 28 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid

1 fund for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 4 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
5 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 B) Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum and overtime wage compensation, and gratuities due
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
11 plus interest thereon at the statutory rate;
- 12 C) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512
13 and the applicable IWC Wage Order;
- 14 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 15 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay
16 period in which a violation occurs and one hundred dollars (\$100) per each
17 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
18 subsequent pay period, not exceeding an aggregate penalty of four thousand
19 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- 20 F) The wages of all terminated employees from the CALIFORNIA LABOR
21 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
22 or until an action therefore is commenced, in accordance with Cal. Lab. Code
23 § 203; and,
- 24 G) The amount of the expenses PLAINTIFF and each member of the
25 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
26 plus interest, and costs of suit.

27 3. On all claims:

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

6
7 Dated: March 9, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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9

10 By: _____
11 Norman B. Blumenthal
12 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: March 9, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFF