

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

VOLT MANAGEMENT CORP., a corporation; and DOES 1-50,
Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JAMAAL JOHNSON, an individual, on behalf of himself and on behalf
of all persons similarly situated,

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 13 2019

Sherril R. Carter, Executive Officer/Clerk of Court

By: Isaac Lovo, Deputy

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

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

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

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

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

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER
(Número de Caso):

19STCV16466

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE:
(Fecha)

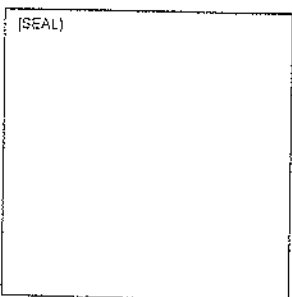
MAY 13 2019

SHERRIL R. CARTER

Clerk, by Isaac Lovo
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Ste. 230A
San Diego, CA 92121
3 Telephone: (619)892-7095
Facsimile: (858) 404-9203
4 Website: www.zakaylaw.com

5 **JCL LAW FIRM, APC**
Jean-Claude Lapuyade (State Bar #248676)
6 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
7 Telephone: (619) 599-8292
Facsimile: (619) 599-8291
8 Website: www.jcl-lawfirm.com

9 Attorneys for Plaintiffs

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 13 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

12 JAMAAL JOHNSON, an individual, on behalf
of himself and on behalf of all persons
13 similarly situated,

14 Plaintiff,

15 v.

16 VOLT MANAGEMENT CORP., a
corporation; and DOES 1-50, Inclusive,

17 Defendants.

Case No: **19STCV16466**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

BY FAX

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant Volt Management Corp. (“DEFENDANT”) is a Delaware corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. DEFENDANT is an international provider of staffing services, outsourcing
10 solutions, and information technology infrastructure services.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee, entitled to overtime and California compliant meal and rest breaks, from April 2017
13 to April 2019 and at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all persons who are or previously were employed by DEFENDANT in California and
17 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period 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 the 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 was an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
28 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA

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

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

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

22 **THE CONDUCT**

23 8. DEFENDANT's position was a non-exempt position and was in fact classified as
24 non-exempt by the DEFENDANT. PLAINTIFF and the other CALIFORNIA CLASS Members
25 employed by DEFENDANT performed manual tasks but were not paid the overtime wages to
26 which they were entitled because of DEFENDANT's systematic policies and practices of failing
27 to correctly record all time worked, including overtime worked. DEFENDANT failed to
28 correctly pay overtime wages to PLAINTIFF and the other CALIFORNIA CLASS Members in

1 accordance with California law, and thereby systematically underpaid overtime compensation to
2 PLAINTIFF and the other CALIFORNIA CLASS Members for their documented time worked,
3 including overtime worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS
4 Members worked more than eight (8) hours in a workday and/or forty (40) hours in a workweek
5 but were not fully compensated for overtime worked as required by law.

6 9. Individuals in these positions are and were employees who are entitled to
7 overtime compensation and prompt payment of amounts that the employer owes an employee
8 when the employee quits or is terminated, and other compensation and working conditions that
9 are prescribed by law. Although DEFENDANT required their employees to work more than
10 eight (8) hours in a workday and/or forty (40) hours in a workweek from time to time, as a
11 matter of company policy and practice, DEFENDANT denied these employees the correct
12 overtime compensation that the law requires. PLAINTIFF and the CALIFORNIA CLASS
13 Members work or worked in California and DEFENDANT's practices and procedures are and
14 were common throughout California. As a result of their rigorous work schedules.

15 10. As a result of their rigorous work schedules, PLAINTIFF and other
16 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
17 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other
18 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
19 more than five (5) hours during some shifts without receiving a meal break. Further,
20 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
21 off-duty meal period for some workdays in which these employees are required by
22 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to provide
23 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
24 evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
25 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
26 accordance with DEFENDANT's strict corporate policy and practice.

27 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
28 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours

1 without being provided ten (10) minute rest periods. Further, these employees were denied their
2 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
3 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
4 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
5 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
6 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
7 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
8 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
9 periods by DEFENDANT and DEFENDANT's managers.

10 12. In violation of the applicable sections of the California Labor Code and the
11 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
12 matter of company policy, practice and procedure, intentionally, knowingly and systematically
13 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
14 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
15 purposefully avoid the payment for all time worked as required by California law which allows
16 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
17 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

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

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

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

14 15. By reason of this uniform conduct applicable to PLAINTIFF and the other
15 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
16 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
17 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which
18 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
19 other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal
20 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional
21 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
22 and/or pay all required compensation for work performed by the members of the CALIFORNIA
23 CLASS and violated the California Labor Code and regulations promulgated thereunder as
24 herein alleged.

25 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
26 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
27 Labor Code. DEFENDANT did not have a policy or practice which provided timely off-duty
28 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed

1 meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent him
2 from being relieved of all of his duties for the legally required off-duty meal periods. As a
3 result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is
4 evidenced by DEFENDANT's business records. To date, DEFENDANT has yet to pay
5 PLAINTIFF all of his overtime wages due to him and DEFENDANT has failed to pay any
6 penalty wages owed to him under California Labor Code Section 203. The amount in
7 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

8 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

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

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

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

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

20 23. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 a. Committing an act of unfair competition in violation of the California Unfair
25 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
26 unfairly, and/or deceptively having in place a company policy, practice and
27 procedure that uniformly denied PLAINTIFF and the members of the
28

1 CALIFORNIA CLASS the correct overtime wages and split shift premiums and
2 otherwise violated applicable law;

3 b. Committing an act of unfair competition in violation of the UCL, by failing to
4 provide mandatory meal and/or rest breaks to PLAINTIFF and the
5 CALIFORNIA CLASS members.

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

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

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply
13 uniformly to every member of the CALIFORNIA CLASS;

14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
16 of the CALIFORNIA CLASS, was a non-exempt employee paid on an hourly
17 basis who was subjected to the DEFENDANT's deceptive practice and policy
18 which failed to provide the legally required meal and rest periods to the
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
21 as a result of DEFENDANT's employment practices. PLAINTIFF and the
22 members of the CALIFORNIA CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and

25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are
27 competent and experienced in Class Action litigation. There are no material
28 conflicts between the claims of the representative PLAINTIFF and the members

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 a. The questions of law and fact common to the CALIFORNIA CLASS
11 predominate over any question affecting only individual CALIFORNIA CLASS
12 Members because the DEFENDANT's employment practices were uniform and
13 systematically applied with respect to the CALIFORNIA CLASS.

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

19 c. The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the Court;

21 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
22 obtain effective and economic legal redress unless the action is maintained as a
23 Class Action;

24 e. There is a community of interest in obtaining appropriate legal and equitable
25 relief for the acts of unfair competition, statutory violations and other
26 improprieties, and in obtaining adequate compensation for the damages and
27 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
28 CLASS;

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

27 30. DEFENDANT, as a matter of company policy, practice and procedure, and in
28

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

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

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

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

- 22 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
23 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
24 pay for missed meal and rest breaks in violation of the California Labor Code
25 and California regulations and the applicable California Wage Order;
- 26 b. Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct;

1 c. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and

3 d. Whether DEFENDANT's conduct was willful.

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

6 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay

7 b. PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS the
8 correct overtime wage pay for which DEFENDANT is liable pursuant to Cal.
9 Lab. Code § 1198;

10 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
11 and the other members of the CALIFORNIA CLASS with all legally required
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
13 rest breaks;

14 d. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
15 employee is discharged or quits from employment, the employer must pay the
16 employee all wages due without abatement, by failing to tender full payment
17 and/or restitution of wages owed or in the manner required by California law to
18 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
19 their employment.

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

22 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
23 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
24 is impracticable and the disposition of their claims as a class will benefit the
25 parties and the Court;

26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
28

1 CLASS and will apply uniformly to every member of the CALIFORNIA
2 LABOR SUB-CLASS;

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

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

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

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

27 i. Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA LABOR SUB-CLASS which would establish

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or

ii. 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 fails to pay all wages due. Including the correct wages for all time 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:

i. 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;

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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 who were employed by DEFENDANT in California during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

10 39. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

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

23 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 204, 226.7, 510, 512, 1194, and 1198, for which this Court should issue
27 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

10 53. 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 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
16 accurately calculate and pay overtime wages to PLAINTIFF and CALIFORNIA CLASS
17 Members.

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

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

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

27 58. 57. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the

1 correct amount of time they worked, including overtime work. As set forth herein,
2 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
3 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS.

5 59. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
6 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
7 result of implementing a uniform policy and practice that denied accurate compensation to the
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
9 overtime pay.

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

16 61. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
18 receive the correct overtime compensation for their time worked for DEFENDANT.

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

27
28

1 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for overtime worked
3 that they were entitled to, constituting a failure to pay all earned wages.

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

11 65. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for their overtime work, PLAINTIFF and the other members of the CALIFORNIA
14 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
15 which are presently unknown to them and which will be ascertained according to proof at trial.

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

23 67. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
25 all time worked and provide them with the requisite compensation, DEFENDANT acted and
26 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
28 for their legal rights, or the consequences to them, and with the despicable intent of depriving

1 them of their property and legal rights, and otherwise causing them injury in order to increase
2 company profits at the expense of these employees.

3 68. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS request recovery of overtime compensation, according to proof, interest, statutory
5 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
6 provided by the California Labor Code and/or other applicable statutes. To the extent overtime
7 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
8 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§
9 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
10 under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT’s conduct as
11 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
12 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

18 69. 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 70. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
22 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
25 did not prevent these employees from being relieved of all of their duties for the legally required
26 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
28 DEFENDANT for their meal periods. Additionally, DEFENDANT’s failure to provide

1 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
2 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
3 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
4 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
5 strict corporate policy and practice.

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

1 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
3 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

12 **FIFTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

26 79. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
27 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
28 members for required expenses incurred in the discharge of their job duties for DEFENDANT's

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

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

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

21 **(Cal. Lab. Code § 226)**

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

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

27 82. Cal. Labor Code § 226 provides that an employer must furnish employees with
28 an "accurate itemized" statement in writing showing:

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

19 83. When DEFENDANT did not accurately record PLAINTIFF's and other
20 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
21 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
22 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
23 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
24 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
25 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
26 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
27 the correct name of the legal entity that was the employer of PLAINTIFF and the
28 CALIFORNIA CLASS Members.

1 DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code §
2 226, causing injury and damages to PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,
4 costs expended calculating the correct wages for all missed meal and rest breaks and the
5 amount of employment taxes which were not properly paid to state and federal tax
6 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover
8 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
9 violation occurred, and one hundred dollars (\$100.00) for each violation in a
10 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to
11 proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00)
12 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-
13 CLASS herein).

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN DUE**

16 **(Cal. Lab. Code § 203)**

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

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

22 85. Cal. Lab. Code § 200 provides that:

23 As used in this article:

- 24 (d) "Wages" includes all amounts for labor performed by employees of every
25 description, whether the amount is fixed or ascertained by the standard of time,
26 task, piece, Commission basis, or other method of calculation.

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

4 86. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
5 an employee, the wages earned and unpaid at the time of discharge are due and payable
6 immediately."

7 87. Cal. Lab. Code § 202 provides, in relevant part, that:
8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee who quits without providing a
13 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute the date of
15 payment for purposes of the requirement to provide payment within 72 hours of the
16 notice of quitting.

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

19 89. Cal. Lab. Code § 203 provides:
20 If an employer willfully fails to pay, without abatement or reduction, in accordance with
21 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
22 who quits, the wages of the employee shall continue as a penalty from the due date
23 thereof at the same rate until paid or until an action therefor is commenced; but the
24 wages shall not continue for more than 30 days.

25 90. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
26 CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages,
27 to these employees who actually worked overtime, as required by law, and has not tendered
28 payment of wages to these employees who missed meal and rest breaks, as required by law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: May 13, 2019

ZAKAY LAW GROUP, APLC

By: 

 Shani O. Zakay
 Attorney for PLAINTIFF

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: May 13, 2019

ZAKAY LAW GROUP, APLC



By: _____

Shani O. Zakay
Attorney for PLAINTIFF