

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/24/2019 at 03:47:33 PM

Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

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

ASCENDANT MARKETING GROUP, LLC, a California limited liability company; and Does 1 through 50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARK CONNOR, RAYNA OLIVAS, and SHIRLEEN MUTULO, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court, Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):
37-2019-00028884-CU-OE-CTL

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):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 05/28/2019
(Fecha)

Clerk, by _____
(Secretario)

K. Sorianosos, Deputy
K. Sorianosos (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 JEAN-CLAUDE LAPUYADE (SBN 248676)
2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**
4 3990 OLD TOWN AVENUE, SUITE C204
5 SAN DIEGO, CA 92110
6 TELEPHONE: (619) 599-8292
7 FAX: (619) 599-8291

8 SHANI O. ZAKAY (SBN 277924)
9 SHANI@ZAKAYLAW.COM
10 **ZAKAY LAW GROUP, APC**
11 5850 OBERLIN DRIVE, SUITE 230A
12 SAN DIEGO, CA 92121
13 TELEPHONE: (619) 255-9047
14 FAX: (858) 404-9203

15 ATTORNEYS FOR PLAINTIFFS

16 **SUPERIOR COURT OF CALIFORNIA**

17 **COUNTY OF SAN DIEGO**

18 MARK CONNOR, RAYNA OLIVAS, and
19 SHIRLEEN MUTULO, individuals, on behalf
20 of themselves, and on behalf of all persons
21 similarly situated,

22 **PLAINTIFFS,**

23 vs.

24 ASCENDANT MARKETING GROUP, LLC,
25 a California limited liability company; and
26 Does 1 through 50, Inclusive,

27 **Defendants.**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/24/2019 at 03:47:33 PM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

Case No. 37-2019-00028864-CU-OE-CTL

COMPLAINT

CLASS ACTION:

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
2. FAILURE TO PROVIDE REQUIRED REST PERIODS
3. FAILURE TO PAY OVERTIME WAGES
4. FAILURE TO PAY MINIMUM WAGES
5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
6. FAILURE TO MAINTAIN REQUIRED RECORDS
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
8. FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES, AND
9. UNFAIR AND UNLAWFUL BUSINESS PRACTICE

DEMAND FOR JURY TRIAL

28 Plaintiffs MARK CONNOR, et al. ("PLAINTIFFS"), individuals, demanding a jury trial, on behalf of themselves and other persons similarly situated, hereby alleges as follows:



1 **JURISDICTION AND VENUE**

2 1. The Superior Court of the State of California has jurisdiction in this matter because
3 PLAINTIFFS are residents of the State of California, and Defendants ASCENDANT MARKETING
4 GROUP, LLC, a California limited liability company, and DOES 1 through 50 inclusive (collectively
5 “DEFENDANTS”), are qualified to do business in California and regularly conduct business in
6 California. Further, no federal question is at issue because the claims are based solely on California
7 law.

8 2. Venue is proper in this judicial district and the County of San Diego, California because
9 PLAINTIFFS, and other persons similarly situated, performed work for DEFENDANTS in the
10 County of San Diego, DEFENDANTS maintain offices and facilities and transact business in the
11 County of San Diego, and because DEFENDANTS’ illegal payroll policies and practices which are
12 the subject of this action were applied, at least in part, to PLAINTIFFS, and other persons similarly
13 situated, in the County of San Diego.

14 **PLAINTIFFS**

15 3. PLAINTIFF MARK CONNOR is a resident of San Diego and was employed as a Sales
16 Representative with DEFENDANTS beginning October 2017 until May 2018.

17 4. PLAINTIFF RAYNA OLIVAS is a resident of San Diego and was employed as a Sales
18 Representative with DEFENDANTS beginning December 2016 until November 2018.

19 5. PLAINTIFF SHIRLEEN MUTULO is a resident of San Diego and was employed as a
20 Sales Representative with DEFENDANTS beginning September 2017 until May 2018.

21 6. PLAINTIFFS, on behalf of themselves and other similarly situated current and former
22 non-exempt employees of DEFENDANTS in the State of California at any time during the four years
23 preceding the filing of this action, and continuing while this action is pending, brings this class action
24 to recover, among other things, wages and penalties from unpaid wages earned and due, including but
25 not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation, illegal
26 meal and rest period policies, failure to pay all wages due to discharged and quitting employees,
27 failure to indemnify employees for necessary expenditures and/or losses incurred in discharging their
28 duties, failure to provide accurate itemized wage statements, failure to maintain required records, and

1 interest, attorney's fees, costs, and expenses.

2 7. PLAINTIFFS bring this action on behalf of themselves and the following situated class
3 of individuals ("CLASS MEMBERS"): all current and former non-exempt employees of
4 DEFENDANTS in the State of California at any time within the period beginning four (4) years prior
5 to the filing of this action and ending at the time this action settles or proceeds to final judgement (the
6 "CLASS PERIOD"). PLAINTIFFS reserve the right to name additional class representatives.

7 **DEFENDANTS**

8 8. PLAINTIFFS are informed and believe, and thereon allege, that Defendant
9 ASCENDANT MARKETING GROUP, LLC, is, and at all times relevant hereto was, a California
10 limited liability company organized and existing under the laws of the State of California.
11 PLAINTIFFS are further informed and believe, and thereon allege, that Defendant ASCENDANT
12 MARKETING GROUP, LLC, is authorized to conduct business in the State of California, and does
13 conduct business in the State of California. Specifically, Defendant ASCENDANT MARKETING
14 GROUP, LLC, maintains offices and facilities and conducts business in, and engages in illegal wage
15 and payroll practices and policies in, the County of San Diego, in the State of California.

16 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
17 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under fictitious
18 names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant designated as
19 a DOE is in some manner highly responsible for the occurrences alleged herein, and that
20 PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately
21 caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the court to amend
22 this Complaint to allege their true names and capacities of such DOE Defendant when ascertained.

23 10. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFFS
24 and CLASS MEMEBERS. PLAINTIFFS are informed and believe, and thereon allege, that at all
25 times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated
26 enterprises, joint employers, subsidiaries, parents, principles, related entities, co-conspirators,
27 authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other.
28 Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego

1 of the other.

2 11. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were employed by
3 DEFENDANTS under employment agreements that were partly written, partly oral, and partly
4 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
5 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFFS and
6 CLASS MEMEBRS all wages earned and due, through methods and schemes which include, but are
7 not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing to
8 properly maintain records, failing to provide accurate itemized statements for each pay period, failing
9 to properly compensate PLAINTIFFS and CLASS MEMEBRS for necessary expenditures, and
10 requiring, permitting or suffering the employee to work off the clock, in violation of the California
11 Labor Code and the applicable Welfare Commission (“IWC”) Order.

12 12. PLAINTIFFS are informed and believe, and thereon allege, that each and every one of
13 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
14 each acting as agents and/or employees, and/or under the direction and control of each of the other
15 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
16 agency, employment and/or direction and control.

17 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
18 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in
19 amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

20 **THE CONDUCT**

21 **A. Off the Clock Work**

22 14. During the CLASS PERIOD, from time to time DEFENDANTS failed and continue to
23 fail to accurately pay PLAINTIFFS and the other CLASS MEMBERS for all hours worked.
24 Specifically, DEFENDANTS’ uniform practices, policies and procedures applicable to PLAINTIFFS
25 and the other CLASS MEMBERS during the CLASS PERIOD, mandated that PLAINTIFFS and
26 other CLASS MEMBERS attend regular meetings, training classes and complete regular sales video
27 trainings at home. Notwithstanding, from time-to-time, DEFENDANTS failed to pay PLAINTIFFS
28 and other CLASS MEMBERS necessary wages for attending required meetings and sales trainings.



1 15. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
2 work performed by PLAINTIFFS and the other CLASS MEMBERS.

3 16. DEFENDANTS controlled the work schedules, duties, protocols, applications,
4 assignments and employment conditions of PLAINTIFFS and the other CLASS MEMBERS.

5 17. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
6 CLASS MEMBERS spent working; however, DEFENDANTS failed to document, track, or pay
7 PLAINTIFFS and the other CLASS MEMBERS all wages earned and owed for all the work they
8 performed, including off-the-clock work.

9 18. PLAINTIFFS and the other CLASS MEMBERS were non-exempt employees, subject
10 to the requirements of the California Labor Code.

11 19. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other CLASS
12 MEMBERS of wages owed for the off-the-clock work activities and their required meal periods.
13 Because PLAINTIFFS and the other CLASS MEMBERS typically worked over 40 hours in a
14 workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also
15 deprived them of overtime pay.

16 20. DEFENDANTS knew or should have known that PLAINTIFFS and the other CLASS
17 MEMBERS' off-the-clock work was compensable under the law.

18 21. As a result, PLAINTIFFS and the other CLASS MEMBERS forfeited wages due to
19 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
20 attending required meetings and sales trainings. DEFENDANTS' uniform policy and practice to not
21 pay PLAINTIFFS and the CLASS MEMBERS wages for all hours worked in accordance with
22 applicable law is evidenced by DEFENDANTS' business records.

23 **B. Overtime Regular Rate Violation**

24 22. During the CLASS PERIOD, from time to time DEFENDANTS failed and continue to
25 fail to accurately calculate and pay PLAINTIFFS and the other CLASS MEMBERS for their
26 overtime hours worked. As a result, from time to time PLAINTIFFS and the other CLASS
27 MEMBERS forfeited wages due them for working overtime without compensation at the correct
28 overtime rates. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and the other



1 CLASS MEMBERS the correct overtime rate for all overtime worked in accordance with applicable
2 law is evidenced by DEFENDANTS’ business records.

3 23. State law provides that employees must be paid overtime at one-and-one-half times their
4 “regular rate of pay.” PLAINTIFFS and other CLASS MEMBERS were compensated at an hourly
5 rate plus flat-sum incentive pay that was tied to specific elements of an employee’s performance.

6 24. The second component of PLAINTIFFS’ and other CLASS MEMBERS’ compensation
7 was DEFENDANTS’ flat-sum non-discretionary incentive program that paid PLAINTIFFS and other
8 CLASS MEMBERS flat-sum incentive wages based on their performance for DEFENDANTS. The
9 flat-sum non-discretionary bonus program provided all employees paid on an hourly basis with flat-
10 sum bonus compensation when the employees met the various performance goals set by
11 DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where
12 PLAINTIFFS and other CLASS MEMBERS worked overtime and earned this flat-sum non-
13 discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-discretionary
14 bonus compensation as part of the employees’ “regular rate of pay” and/or calculated all hours
15 worked rather than just all non-overtime hours worked. Management and supervisors described the
16 incentive/bonus program to potential and new employees as part of the compensation package. As a
17 matter of law, the incentive compensation received by PLAINTIFFS and the other CLASS
18 MEMBERS must be included in the “regular rate of pay.” The failure to do so has resulted in a
19 systematic underpayment of overtime compensation to PLAINTIFFS and the other CLASS
20 MEMBERS by DEFENDANTS.

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

1 the CLASS PERIOD should be adjusted accordingly.

2 **C. Paid Missed Meal and Rest Period Premiums - Regular Rate Violation**

3 26. During the CLASS PERIOD, DEFENDANTS, from time to time, failed and continue to
4 fail to accurately calculate and pay PLAINTIFFS and the other CLASS MEMBERS their missed
5 meal and rest period premiums. As a result, PLAINTIFFS and the other CLASS MEMBERS
6 forfeited wages due them for their missed meal and rest periods without compensation at the correct
7 missed meal and rest period rates. DEFENDANTS' uniform policy and practice to not pay
8 PLAINTIFFS and the other CLASS MEMBERS the correct rate for all missed meal and rest period
9 premium payment in accordance with applicable law is evidenced by DEFENDANTS' business
10 records.

11 27. State law provides that employees must be paid premium hour of pay at the employee's
12 "regular rate" of pay for each workday that the meal or rest period is not provided. PLAINTIFFS and
13 the other CLASS MEMBERS were compensated at an hourly rate plus a flat-sum incentive pay that
14 was tied to specific elements of an employee's performance.

15 28. The second component of PLAINTIFFS and the other CLASS MEMBERS'
16 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
17 PLAINTIFFS and the other CLASS MEMBERS flat-sum incentive wages based on their
18 performance for DEFENDANTS. The non-discretionary flat-sum incentive program provided all
19 employees paid on an hourly basis with flat-sum incentive compensation when the employees met the
20 various performance goals set by DEFENDANTS. However, when calculating the regular rate of pay
21 in order to pay missed rest and meal period premiums to PLAINTIFFS and the other CLASS
22 MEMBERS, DEFENDANTS failed to include the flat-sum incentive compensation as part of the
23 employees' "regular rate of pay" for purposes of calculating missed rest and meal period premiums.
24 Management and supervisors described the flat-sum incentive program to potential and new
25 employees as part of the compensation package. As a matter of law, the incentive compensation
26 received by PLAINTIFFS and the other CLASS MEMBERS must be included in the "regular rate of
27 pay." The failure to do so has resulted in a systematic underpayment of premium pay for missed
28 meal and rest periods to PLAINTIFFS and the other CLASS MEMBERS by DEFENDANTS.



1 29. In violation of the applicable sections of the California Labor Code and the requirements
2 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
3 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and
4 the other CLASS MEMBERS at the correct rate of pay for all missed meal and rest period premiums.
5 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of
6 the correct missed meal and rest period premium compensation as required by California law which
7 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
8 complied with the law. To the extent equitable tolling operates to toll claims by the CLASS
9 MEMBERS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

10 **D. Missed Meal and Rest Period Violation**

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

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



1 DEFENDANTS' managers.

2 **E. Inaccurate Itemized Wage Statements**

3 32. When PLAINTIFFS and the other CLASS MEMBERS worked overtime in the same
4 pay period they earned incentive wages and/or missed meal and rest breaks, DEFENDANTS also
5 failed to provide PLAINTIFFS and the other CLASS MEMBERS with complete and accurate wage
6 statements which failed to show, among other things, the name and address of the legal entity that is
7 the employer, the correct overtime rate for overtime worked, including, work performed in excess of
8 eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
9 payments for missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
10 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
11 among other things, gross wages earned and all applicable hourly rates in effect during the pay period
12 and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed
13 above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS and the other CLASS
14 MEMBERS itemized wage statements list that lists all the requirements under California Labor Code
15 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other
16 CLASS MEMBERS with wage statements which violated Cal. Lab. Code § 226.

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

1 34. Specifically, as to PLAINTIFFS and the other CLASS MEMBERS' pay,
2 DEFENDANTS provided compensation to them in the form of two components. One component of
3 PLAINTIFFS and the other CLASS MEMBERS' compensation was a base hourly wage. The second
4 component of PLAINTIFFS and the other CLASS MEMBERS' compensation were non-
5 discretionary incentive wages. DEFENDANTS paid the incentive wages, so long as PLAINTIFFS
6 and the other CLASS MEMBERS met certain predefined performance requirements.

7 35. PLAINTIFFS and the other CLASS MEMBERS met DEFENDANTS' predefined
8 eligibility performance requirements in various pay periods throughout his employment with
9 DEFENDANTS and DEFENDANTS paid PLAINTIFFS and the other CLASS MEMBERS the
10 incentive wages. However, when calculating the regular rate of pay, in those pay periods where
11 PLAINTIFFS and the other CLASS MEMBERS worked overtime and earned this flat-sum non-
12 discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-discretionary
13 bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours
14 worked rather than just all non-overtime hours worked and thereby underpaid PLAINTIFFS and the
15 other CLASS MEMBERS for overtime worked throughout their employment with DEFENDANTS.
16 The incentive compensation paid by DEFENDANTS constituted wages within the meaning of the
17 California Labor Code and thereby should have been part of PLAINTIFFS and the other CLASS
18 MEMBERS' "regular rate of pay." PLAINTIFFS and the other CLASS MEMBERS were also from
19 time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for their
20 meal periods. PLAINTIFFS and the other CLASS MEMBERS were required to perform work as
21 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty
22 meal break. Further, DEFENDANTS failed to provide PLAINTIFFS and the other CLASS
23 MEMBERS with a second off-duty meal period from time to time in which he was required by
24 DEFENDANTS to work ten (10) hours of work. PLAINTIFFS and the other CLASS MEMBERS
25 therefore forfeited meal and rest breaks without additional compensation and in accordance with
26 DEFENDANTS' strict corporate policy and practice. DEFENDANTS also provided PLAINTIFFS
27 and the other CLASS MEMBERS with a paystub that failed to accurately display PLAINTIFF's
28 correct rates of overtime pay and payments for missed meal and rest periods for certain pay periods in



1 violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS has not fully paid PLAINTIFFS and
2 the other CLASS MEMBERS the overtime compensation still owed to them. The amount in
3 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

4 **CLASS ACTION DESIGNATION**

5 36. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
6 Procedure § 382 on behalf of all Field Technicians who have worked for DEFENDANT in California
7 (“CLASS MEMBERS”) at any time within the period beginning four (4) years prior to the filing of
8 this action and ending at the time this action settles or proceeds to final judgement (the “CLASS
9 PERIOD”).

10 37. PLAINTIFF and other class members have uniformly been deprived of wages and
11 penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages,
12 unpaid and miscalculated overtime compensation, miscalculated meal and rest period premiums,
13 illegal meal and rest period policies, failure to pay all wages due to discharged and quitting employees,
14 failure to provide accurate itemized wage statements, failure to maintain required records, and interest,
15 attorney’s fees, costs, and expenses.

16 38. The members of the class are so numerous that joinder of all class members is
17 impractical.

18 39. Common questions of law and fact regarding DEFENDANT’s conduct with respect to
19 the miscalculation of overtime wages paid to Field Technicians, miscalculated missed meal and rest
20 period premiums, and failing to provide legally compliant meal and rest periods, failure to provide
21 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage
22 and overtime, exist as to all members of the class and predominate over any questions affecting solely
23 any individual members of the class. Among the questions of law and fact common to the class are:

- 24 a. Whether DEFENDANT’s flat-sum incentive compensation program is non-
25 discretionary;
- 26 b. Whether DEFENDANT miscalculated the regular rate of pay in those pay
27 periods where PLAINTIFF and other CLASS MEMBERS worked overtime and earned a flat-
28 sum bonus;





1 c. Whether DEFENDANT miscalculated the regular rate of pay for missed meal
2 and rest period premiums in those pay periods where PLAINTIFF and other CLASS
3 MEMBERS earned a flat-sum bonus and earned a meal or rest period premium payment from
4 DEFENDANT;

5 d. Whether DEFENDANT’S meal and rest period policies are legally compliant;

6 e. Whether DEFENDANT failed to provide accurate itemized wage statements to
7 PLAINTIFF and the CLASS MEMBERS;

8 f. Whether class members have been required to follow uniform procedures and
9 policies regarding their work for DEFENDANT;

10 40. PLAINTIFF is a class member who suffered damages as a result of DEFENDANT’S
11 conduct and actions alleged herein.

12 41. PLAINTIFF’S claims are typical of the claims of the class, and PLAINTIFF has the
13 same interests as the other members of the class.

14 42. PLAINTIFF will fairly and adequately represent and protect the interests of the class.
15 PLAINTIFF has retained able counsel experienced in class action litigation. The interests of
16 PLAINTIFF are coincident with, and not antagonistic to, the interests of the other class members.

17 43. The questions of law and fact common to the members of the class predominate over
18 any questions affecting only individual members, including legal and factual issues relating to liability
19 and damages.

20 44. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy because joinder of all class members is impractical. Moreover, since
22 the damages suffered by individual members of the class may be relatively small, the expense and
23 burden of individual litigation makes it practically impossible for the members of the class
24 individually to redress the wrongs done to them. The class is readily definable and prosecution of this
25 action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty
26 in the management of this action as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**

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

5 45. PLAINTIFFS incorporate herein by specific references, as though fully set forth, the
6 allegations in the preceding paragraphs.

7 46. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
8 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS required,
9 permitted or otherwise suffered PLAINTIFFS and CLASS MEMEBRS to take less than 30-minute
10 meal periods, or to work through them, and have failed to otherwise provide the required meal periods
11 to PLAINTIFFS and CLASS MEMEBRS pursuant to California Labor Code § 226.7, 512 and IWC
12 Order No. 5-2001, § 11.

13 47. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage Order
14 No. 5-2001, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were not
15 provided with a meal period, in accordance with the applicable wage order, one additional hour of
16 compensation at each employee's regular rate of pay for each workday that a meal period was not
17 provided.

18 48. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197, and
19 IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all
20 hours worked during their meal periods.

21 49. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
22 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
23 and due, interest, penalties, expenses, and costs of suit.

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1 in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
2 work in any workweek.

3 56. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
4 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001.
5 During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and CLASS
6 MEMBERS for all overtime hours worked as required under the forgoing provisions of the California
7 Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half
8 (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC
9 Wage Order No. 5-2001, § 3; requiring, permitting or suffering PLAINTIFFS and CLASS
10 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and CLASS
11 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which
12 PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and
13 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS
14 for each pay period; and other methods to be discovered. During the CLASS PERIOD,
15 DEFENDANTS failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours
16 worked and to pay the amount of overtime wages due as required by the California Labor Code and
17 IWC Wage Order by failing and refusing to include all compensation, including commissions and
18 bonuses earned, due and owing and/or paid, in the regular rate of pay from which overtime wages
19 were calculated and paid. During the CLASS PERIOD, DEFENDANTS failed to compensate
20 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and to pay the amount of
21 overtime wages due as required by the California Labor Code and IWC Wage Order by incorrectly
22 calculating the regular rate of pay from which overtime wages were calculated and paid.

23 57. In violations of California Law, DEFENDANTS have knowingly and willfully refused
24 to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all wages
25 earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS MEMBERS have
26 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
27 interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to fully
28 perform their obligations under state law, all to their respective damages in amounts according to

1 proof at time of trial, and within the jurisdiction of this Court.

2 58. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1194,
3 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§ 200,
4 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and
5 IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance
6 of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and
7 costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Pay Minimum Wages**

10 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

11 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

12 59. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
13 allegations in the preceding paragraphs.

14 60. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001, §
15 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
16 period is unlawful.

17 61. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and CLASS
18 MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting, or
19 suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or
20 suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest breaks; illegally and
21 inaccurately recording time in which PLAINTIFFS and CLASS MEMBERS worked; failing to
22 properly maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate
23 itemized wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

24 62. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
25 1197, and IWC Wage Order No. 5-2001, § 4. As a proximate result of the aforementioned violations,
26 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial.
27 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
28 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and

1 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to the them by
2 DEFENDANTS, plus interest, penalties, attorney’s fees, expenses, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Labor Code §§ 201, 202, 203]**

6 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

7 63. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
8 allegations in the preceding paragraphs.

9 64. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee’s wages accrued and unpaid at the
12 time of discharge are due and payable immediately.

13 65. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to
14 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
15 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
16 which case the employee is entitled to his or her wages at the time of quitting.

17 66. California Labor Code § 203 provides that if an employer willfully fails to pay, in
18 accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged
19 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
20 to the employee at the same rate for up to 30 workdays.

21 67. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
22 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
23 California Labor Code §§ 201 and 202.

24 68. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory
25 penalties, including the waiting time penalties provided in California Labor Code § 203, together with
26 interest thereon, as well as other available remedies.

27 69. As a proximate result of DEFENDANTS’ unlawful actions and omissions,
28 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount according

1 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
2 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
3 Code §§ 1194 and 2699.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001, § 7]**

7 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

8 70. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
9 allegations in the preceding paragraphs.

10 71. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
11 practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
12 DEFENDANTS knowingly and intentionally failed to maintain records as required under California
13 Labor Code §§ 226, 1174, and IWC Wage Order No. 5-2001, § 7, including but not limited to, the
14 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
15 meal periods; time records showing when each employee begins and ends each work period; and
16 accurate itemized statements.

17 72. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,
19 and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
20 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil
21 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
22 expenses, and reasonable attorney's fees, including but not limited to those provided in California
23 Labor Code § 226(e), as well as other available remedies.

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

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

5 73. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
6 allegations in the preceding paragraphs.

7 74. During the CLASS PERIOD, DEFENDANTS routinely failed to provide PLAINTIFFS
8 and CLASS MEMBERS with timely, accurate and itemized wage statements in writing showing each
9 employee's gross wages and earned, total hours worked, all deductions made, net wages earned, the
10 name and address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS, and
11 all applicable hourly rates in effect during each pay period and the corresponding number of hours
12 worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 5-
13 2001, § 7.

14 75. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
15 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
16 accordance with California Labor Code § 226(a).

17 76. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS
18 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
19 wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and CLASS MEMBERS are
20 entitled to all available statutory penalties, including, but not limited to civil penalties pursuant to
21 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
22 attorney's fees, including but not limited to those provided in California Labor Code § 226(e), as well
23 as other available remedies.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

3 **[Cal. Labor Code § 2802]**

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

5 77. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
6 allegations in the preceding paragraphs.

7 78. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
8 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
9 his or her duties, or of his or her obedience to the directions of the employer.

10 79. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
11 indemnify PLAINTIFFS and CLASS MEMBERS for all business expenses and/or losses incurred in
12 direct consequence of the discharge of their duties while working under the direction of
13 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other
14 employment-related expenses, in violation of California Labor Code § 2802.

15 80. As a proximate result of DEFENDANT’s unlawful actions and omissions, PLAINTIFFS
16 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
17 reimbursement of all necessary expenditures, plus interest thereon, pursuant to California Labor Code
18 § 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory
19 penalties and an award of costs, expenses, and reasonable attorney’s fees, including those provided in
20 California Labor Code § 2802(c), as well as other available remedies.

21 **NINTH CAUSE OF ACTION**

22 **Unfair and Unlawful Business Practices**

23 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

24 **(By PLAINTIFFS and the CLASS MEMBERS against all DEFENDANTS)**

25 81. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
26 allegations in the preceding paragraphs.

27 82. Each and every one of DEFENDANT’s acts and omissions in violation of the California
28 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to

1 DEFENDANT's failure and refusal to provide required meal periods, DEFENDANT's failure and
2 refusal to provide required rest breaks, DEFENDANT's failure and refusal to pay overtime
3 compensation, including all compensation earned in the regular rate of pay from which overtime
4 wages were calculated and paid, DEFENDANTS' failure and refusal to pay minimum wages,
5 DEFENDANT's failure and refusal to pay all wages due to discharged or quitting employees,
6 DEFENDANTS's failure and refusal to furnish accurate itemized wage statements; DEFENDANT's
7 failure and refusal to maintain required records, DEFENDANT's failure and refusal to indemnify
8 PLAINTIFFS and CLASS MEMBERS for necessary expenditures and/or losses incurring in
9 discharging their duties, constitutes an unfair and unlawful business practice under California Business
10 and Professions Code § 17200 et seq.

11 83. DEFENDANTS' violations of California wage and hour laws constitute a business
12 practice because DEFENDANT's aforementioned acts and omissions were done repeatedly over a
13 significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and CLASS
14 MEMBERS.

15 84. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest
16 periods, and other benefits as required by the California Labor Code, the California Code of
17 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
18 report, and pay the correct sums of assessment to the state authorities under the California Labor Code
19 and other applicable regulations.

20 85. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS
21 have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS,
22 CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-
23 gotten gains and to restore them to PLAINTIFFS and the CLASS MEMBERS.

24 86. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and
25 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to
26 orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS
27 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and
28 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in

1 an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated,
4 respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and each of
5 them, as follows:

- 6 1. For compensatory damages in an amount to be ascertained at trial;
- 7 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
8 disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 9 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
10 IWC Wage Order No. 5-2001;
- 11 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 12 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
13 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
14 engaging in the unlawful business practices complained herein;
- 15 6. For waiting time penalties pursuant to California Labor Code § 203;
- 16 7. For statutory and civil penalties according to proof, including but not limited to all
17 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;
- 18 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
19 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
20 providing for pre-judgment interest;
- 21 9. For reasonable attorney's fees and costs pursuant to California Labor Code §§ 1194,
22 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
23 attorneys' fees and costs;
- 24 10. For declaratory relief;
- 25 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
26 Seventh, Eighth and Ninth Causes of Action as a class action;
- 27 12. For an order appointing PLAINTIFFS as class representatives, and PLAINTIFFS'
28 counsel as class counsel; and

