

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/12/2019 at 11:11:32 AM

Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

ASA CARLTON, INC., a Georgia corporation; ASA CARLTON HOLDINGS, LLC, a Georgia limited liability company; and DOES 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RAYMOND FRAZIER, an individual, on behalf of himself, and on behalf of all persons similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

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, California 92101

CASE NUMBER:
(Número del Caso):

37-2019-00036147-CU-0E-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):

Shani O. Zakay, Esq. 5850 Oberlin Dr. Ste 230A San Diego, CA 92121 Tel: (619) 255-9047 Fax: (858) 404-9203

DATE: 07/15/2019

(Fecha)

Clerk, by

(Secretario)


M. McClure

, 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)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
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8 Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/12/2019 at 11:11:32 AM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 RAYMOND FRAZIER, an individual, on
behalf of himself, and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

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16 ASA CARLTON, INC., a Georgia
corporation; ASA CARLTON HOLDINGS,
17 LLC, a Georgia limited liability company;
and DOES 1 through 50, Inclusive,

18 Defendants.
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Case No: 37-2019-00036147-CU-OE-CTL

COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant ASA CARLTON, INC., is a Georgia corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California. Defendant ASA CARLTON HOLDINGS, LLC is a Georgia limited liability company
9 and at all relevant times mentioned herein conducted and continues to conduct substantial and
10 regular business throughout California. ASA CARLTON, INC., and ASA CARLTON
11 HOLDINGS, LLC are referred to herein collectively as “DEFENDANTS.”

12 2. DEFENDANTS were the joint employers of PLAINTIFF as evidenced by the
13 contracts signed and by the company the PLAINTIFF performed work for respectively, and are
14 therefore jointly responsible as employers for the conduct alleged herein and collectively referred
15 to herein as “DEFENDANTS”.

16 3. DEFENDANTS provide interior construction, multisite retail programs, retail
17 fixtures and ADA compliance work services to retail customers such as Kohl’s, JC Penny, Dollar
18 Tree, CVS Pharmacy and 7-Eleven.

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

26 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
which failed to lawfully compensate these employees for all their overtime worked.

1 DEFENDANTS' uniform policy and practice alleged herein is an unlawful, unfair and deceptive
2 business practice whereby DEFENDANTS retained and continue to retain wages due to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
5 DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the
6 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and
7 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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THE CONDUCT

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2 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically,
8 DEFENDANTS required PLAINTIFF to work while clocked out. PLAINTIFF was often
9 interrupted by work assignments during his meal breaks. Indeed there were many days where
10 PLAINTIFF did not even receive a partial lunch. Moreover, PLAINTIFF was often required to
11 clock out at the end of the day and continue to work off-the-clock without compensation. As a
12 result, the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
13 minimum wage and overtime compensation by working without their time being accurately
14 recorded and without compensation at the applicable minimum wage and overtime rates.
15 DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
16 CLASS Members for all time worked is evidenced by DEFENDANTS’ business records.

17 9. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
18 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
19 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
20 overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and
21 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and
22 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
23 applicable overtime compensation for overtime worked and to avoid paying these employees for
24 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
25 time to time, forfeited time worked by working without their time being accurately recorded and
26 without compensation at the applicable overtime rates.
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1 10. The mutability of the timekeeping system also allowed DEFENDANTS to alter
2 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
3 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
4 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
5 were not at all times provided an off-duty meal break. This practice is a direct result of
6 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
7 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

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

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

14 14. In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA
15 CLASS Members to engage in additional work, this sometimes resulted in a second reporting for
16 work in a single workday. In such a circumstance of a second reporting for work in a single
17 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
18 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work
19 a second time in any one workday and is furnished less than two (2) hours of work on the second
20 reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay,
21 which shall be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

22 15. By reason of this uniform conduct applicable to PLAINTIFF and all
23 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
26 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
27 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the
28 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation

1 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
2 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
3 California Labor Code and regulations promulgated thereunder as herein alleged.

4 16. Specifically as to PLAINTIFF's pay, they were from time to time unable to take
5 off duty meal and rest breaks and were not fully relieved of duty for their meal periods.
6 PLAINTIFF were required to perform work as ordered by DEFENDANTS for more than five (5)
7 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
8 provide PLAINTIFF with a second off-duty meal period each workday in which they were
9 required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
10 and rest breaks without additional compensation and in accordance with DEFENDANTS' strict
11 corporate policy and practice. DEFENDANTS also provided PLAINTIFF with paystubs that
12 failed to accurately display payments for missed meal and rest periods for certain pay periods in
13 violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF
14 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
15 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

10 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

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

3 23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 24. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

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

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

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

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

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

- 24 a. Without class certification and determination of declaratory, injunctive, statutory
- 25 and other legal questions within the class format, prosecution of separate actions
- 26 by individual members of the CALIFORNIA CLASS will create the risk of:
 - 27 i. Inconsistent or varying adjudications with respect to individual members
 - 28 of the CALIFORNIA CLASS which would establish incompatible

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standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;

ii. Adjudication with respect to individual members of the CALIFORNIA 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;

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

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

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

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CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

- 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
- 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

1 because the DEFENDANTS' employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

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

1 31. DEFENDANTS maintain records from which the Court can ascertain and identify
2 by name and job title, each of DEFENDANTS’ employees who have been systematically,
3 intentionally and uniformly subjected to DEFENDANTS’ company policy, practices and
4 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
5 additional job titles of similarly situated employees when they have been identified.

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

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

- 10 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
11 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
12 missed meal and rest breaks in violation of the California Labor Code and
13 California regulations and the applicable California Wage Order;
- 14 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
16 thirty (30) minute meal breaks and rest periods;
- 17 c. Whether DEFENDANTS failed to compensate PLAINTIFF and other members of
18 the CALIFORNIA LABOR SUB-CLASS for all time worked.
- 19 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
21 statements;
- 22 e. Whether DEFENDANTS have engaged in unfair competition by the above-listed
23 conduct;
- 24 f. The proper measure of damages and penalties owed to the members of the
25 CALIFORNIA LABOR SUB-CLASS; and
- 26 g. Whether DEFENDANTS’ conduct was willful.

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

- 1 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
2 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
3 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
4 § 1194;
- 5 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
6 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
7 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
8 Cal. Lab. Code §§ 1194 and 1197;
- 9 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
10 the other members of the CALIFORNIA CLASS with all legally required off-duty,
11 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 12 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
14 statement in writing showing all accurate and applicable overtime rates in effect
15 during the pay period and the corresponding amount of time worked at each
16 overtime rate by the employee;
- 17 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
18 employee is discharged or quits from employment, the employer must pay the
19 employee all wages due without abatement, by failing to tender full payment
20 and/or restitution of wages owed or in the manner required by California law to
21 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
22 their employment.

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

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

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

23 36. In addition to meeting the statutory prerequisites to a Class Action, this action is

24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish 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 DEFENDANTS uniformly failed to pay all wages due 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:

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

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

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

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- 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 DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have 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 DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANTS 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. DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And
11 Prof. 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 competition
15 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, as
20 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, DEFENDANTS have 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, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this
27 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
28 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
29 competition, including restitution of wages wrongfully withheld.

30 42. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
31 unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
3 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 43. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
6 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
8 worked, and failed to pay reporting time pay, pursuant to the applicable Cal. Lab. Code, and
9 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
10 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
11 Code § 17203, including restitution of wages wrongfully withheld.

12 44. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

16 45. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

27 48. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
2 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
3 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
4 compete against competitors who comply with the law.

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

10 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
14 business practices, including earned but unpaid wages.

15 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
18 engaging in any unlawful and unfair business practices in the future.

19 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
21 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
22 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
25 unlawful and unfair business practices.

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1 **SECOND CAUSE OF ACTION**

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

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

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

9 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
11 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
12 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

18 57. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
19 including minimum wage compensation and interest thereon, together with the costs of suit.

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

25 59. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
27 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
pay.

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

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

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

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

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

25 65. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,

1 or the consequences to them, and with the despicable intent of depriving them of their property
2 and legal rights, and otherwise causing them injury in order to increase company profits at the
3 expense of these employees.

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

15 **THIRD CAUSE OF ACTION**

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

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

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

23 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
25 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly
26 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
28 any workweek.

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

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

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

11 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
13 DEFENDANTS and were not paid for all the time they worked, including overtime work.

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

21 74. In committing these violations of the California Labor Code, DEFENDANTS acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

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

28 76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
3 bargaining agreement that would preclude the causes of action contained herein this Complaint.
4 Rather, PLAINTIFF bring this Action on behalf of himself and the CALIFORNIA LABOR SUB-
5 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
6 the State of California.

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

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

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

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

1 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
2 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
3 not prevent these employees from being relieved of all of their duties for the legally required off-
4 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
6 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
8 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
9 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore forfeited meal breaks without additional compensation and in accordance with
11 DEFENDANTS' strict corporate policy and practice.

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

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

20
21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
23 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

11 89. DEFENDANTS further violated California Labor Code §§ 226.7 and the
12 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
13 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
14 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
15 workday that rest period was not provided.

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

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**
23 **against all Defendants)**

24 91. 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 92. Cal. Labor Code § 226 provides that an employer must furnish employees with an
28 "accurate itemized" statement in writing showing:

- a. Gross wages earned;

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

93. When DEFENDANTS did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, missed meal and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time

1 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

23 96. Cal. Lab. Code § 200 provides that:

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

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

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

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

14 99. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 100. Cal. Lab. Code § 203 provides:

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

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

5 103. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 105. PAGA Plaintiffs, and such persons that may be added from time to time who
17 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
18 General Act, bring this Representative Action on behalf of the State of California with respect to
19 himself and all individuals who are or previously were employed by DEFENDANTS and
20 classified as non-exempt employees in California during the time period of May 6, 2018 until the
21 present (the "AGGRIEVED EMPLOYEES").

22 106. On May 6, 2019, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific
24 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
25 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
27 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
28

1 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 107. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to properly record and pay PAGA
5 Plaintiffs and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
6 overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage
7 statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to timely
8 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
9 including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558,
10 1194, 1197, 1197.1, 1198, and the applicable Industrial Wage Order(s), and thereby gives rise to
11 statutory penalties as a result of such conduct. PAGA Plaintiffs hereby seek recovery of civil
12 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
13 representative of the State of California for the illegal conduct perpetrated on Plaintiff and the
14 other AGGRIEVED EMPLOYEES.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF pray for a judgment against each Defendants, jointly and
17 severally, as follows:

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

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- 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, reporting time wages, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
 - a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

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4. On all claims:

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

DATED: July 11, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: July 11, 2019

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

Client #19801

May 6, 2019

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

ASA HOLDINGS, LLC
c/o Scott Hester
5224 Palmero Court
Buford, GA 30518
Certified Mail No. 7018 3090 0000 5110 2229

ASA CARLTON, INC.
c/o Business Filings Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Certified Mail No. 7018 3090 0000 5110 2212

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents RAYMOND FRAZIER (“Client”) and other aggrieved employees in a class action against ASA CARLTON, INC. and ASA HOLDINGS, LLC (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendants in California from July 2018 to September 2018. Client was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Respectfully,



Shani O. Zakay
Attorney for Mr. Frazier



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

Client #19801

May 6, 2019

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
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ASA HOLDINGS, LLC
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5224 Palmero Court
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Client was employed by Defendants in California from July 2018 to September 2018. Client was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

Respectfully,



Shani O. Zakay
Attorney for Mr. Frazier

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 5850 Oberlin Drive, Suite 230A
San Diego, CA 92121
3 Telephone: (619) 255-9047
Facsimile: (858) 404-9203

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

8 Attorneys for Plaintiffs

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO**

11 RAYMOND FRAZIER, an individual, on
behalf of himself, and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15
16 ASA CARLTON, INC., a Georgia
corporation; ASA CARLTON HOLDINGS,
17 LLC, a Georgia limited liability company;
and DOES 1 through 50, Inclusive,

18 Defendants.
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Case No:

COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant ASA CARLTON, INC., is a Georgia corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California. Defendant ASA CARLTON HOLDINGS, LLC is a Georgia limited liability company
9 and at all relevant times mentioned herein conducted and continues to conduct substantial and
10 regular business throughout California. ASA CARLTON, INC., and ASA CARLTON
11 HOLDINGS, LLC are referred to herein collectively as “DEFENDANTS.”

12 2. DEFENDANTS were the joint employers of PLAINTIFF as evidenced by the
13 contracts signed and by the company the PLAINTIFF performed work for respectively, and are
14 therefore jointly responsible as employers for the conduct alleged herein and collectively referred
15 to herein as “DEFENDANTS”.

16 3. DEFENDANTS provide interior construction, multisite retail programs, retail
17 fixtures and ADA compliance work services to retail customers such as Kohl’s, JC Penny, Dollar
18 Tree, CVS Pharmacy and 7-Eleven.

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

26 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
which failed to lawfully compensate these employees for all their overtime worked.

1 DEFENDANTS' uniform policy and practice alleged herein is an unlawful, unfair and deceptive
2 business practice whereby DEFENDANTS retained and continue to retain wages due to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
5 DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the
6 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and
7 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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THE CONDUCT

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2 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically,
8 DEFENDANTS required PLAINTIFF to work while clocked out. PLAINTIFF was often
9 interrupted by work assignments during his meal breaks. Indeed there were many days where
10 PLAINTIFF did not even receive a partial lunch. Moreover, PLAINTIFF was often required to
11 clock out at the end of the day and continue to work off-the-clock without compensation. As a
12 result, the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited
13 minimum wage and overtime compensation by working without their time being accurately
14 recorded and without compensation at the applicable minimum wage and overtime rates.
15 DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
16 CLASS Members for all time worked is evidenced by DEFENDANTS’ business records.

17 9. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
18 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
19 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
20 overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and
21 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and
22 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
23 applicable overtime compensation for overtime worked and to avoid paying these employees for
24 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
25 time to time, forfeited time worked by working without their time being accurately recorded and
26 without compensation at the applicable overtime rates.
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1 10. The mutability of the timekeeping system also allowed DEFENDANTS to alter
2 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
3 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
4 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
5 were not at all times provided an off-duty meal break. This practice is a direct result of
6 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
7 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

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

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

14 14. In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA
15 CLASS Members to engage in additional work, this sometimes resulted in a second reporting for
16 work in a single workday. In such a circumstance of a second reporting for work in a single
17 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
18 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work
19 a second time in any one workday and is furnished less than two (2) hours of work on the second
20 reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay,
21 which shall be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

22 15. By reason of this uniform conduct applicable to PLAINTIFF and all
23 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
26 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
27 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the
28 DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation

1 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
2 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
3 California Labor Code and regulations promulgated thereunder as herein alleged.

4 16. Specifically as to PLAINTIFF's pay, they were from time to time unable to take
5 off duty meal and rest breaks and were not fully relieved of duty for their meal periods.
6 PLAINTIFF were required to perform work as ordered by DEFENDANTS for more than five (5)
7 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
8 provide PLAINTIFF with a second off-duty meal period each workday in which they were
9 required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
10 and rest breaks without additional compensation and in accordance with DEFENDANTS' strict
11 corporate policy and practice. DEFENDANTS also provided PLAINTIFF with paystubs that
12 failed to accurately display payments for missed meal and rest periods for certain pay periods in
13 violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF
14 all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
15 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

10 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

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

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

3 23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 24. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

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

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

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

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

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

- 24 a. Without class certification and determination of declaratory, injunctive, statutory
- 25 and other legal questions within the class format, prosecution of separate actions
- 26 by individual members of the CALIFORNIA CLASS will create the risk of:
- 27 i. Inconsistent or varying adjudications with respect to individual members
- 28 of the CALIFORNIA CLASS which would establish incompatible

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standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;

ii. Adjudication with respect to individual members of the CALIFORNIA 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 CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;

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

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

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

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CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

1 because the DEFENDANTS' employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

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

1 31. DEFENDANTS maintain records from which the Court can ascertain and identify
2 by name and job title, each of DEFENDANTS’ employees who have been systematically,
3 intentionally and uniformly subjected to DEFENDANTS’ company policy, practices and
4 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
5 additional job titles of similarly situated employees when they have been identified.

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

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

- 10 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
11 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
12 missed meal and rest breaks in violation of the California Labor Code and
13 California regulations and the applicable California Wage Order;
- 14 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
16 thirty (30) minute meal breaks and rest periods;
- 17 c. Whether DEFENDANTS failed to compensate PLAINTIFF and other members of
18 the CALIFORNIA LABOR SUB-CLASS for all time worked.
- 19 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
21 statements;
- 22 e. Whether DEFENDANTS have engaged in unfair competition by the above-listed
23 conduct;
- 24 f. The proper measure of damages and penalties owed to the members of the
25 CALIFORNIA LABOR SUB-CLASS; and
- 26 g. Whether DEFENDANTS’ conduct was willful.

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

- 1 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
2 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
3 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
4 § 1194;
- 5 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
6 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
7 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
8 Cal. Lab. Code §§ 1194 and 1197;
- 9 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
10 the other members of the CALIFORNIA CLASS with all legally required off-duty,
11 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 12 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
14 statement in writing showing all accurate and applicable overtime rates in effect
15 during the pay period and the corresponding amount of time worked at each
16 overtime rate by the employee;
- 17 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
18 employee is discharged or quits from employment, the employer must pay the
19 employee all wages due without abatement, by failing to tender full payment
20 and/or restitution of wages owed or in the manner required by California law to
21 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
22 their employment.

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

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

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

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

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish 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 DEFENDANTS uniformly failed to pay all wages due 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:

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

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

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

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- 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 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have 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 DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANTS 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. DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And
11 Prof. 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 competition
15 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, as
20 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, DEFENDANTS have 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, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this
27 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
28 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
29 competition, including restitution of wages wrongfully withheld.

30 42. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
31 unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
3 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 43. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
6 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
8 worked, and failed to pay reporting time pay, pursuant to the applicable Cal. Lab. Code, and
9 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
10 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
11 Code § 17203, including restitution of wages wrongfully withheld.

12 44. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

16 45. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

27 48. By and through the unlawful and unfair business practices described herein,
28 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of
2 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
3 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
4 compete against competitors who comply with the law.

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

10 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
14 business practices, including earned but unpaid wages.

15 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
18 engaging in any unlawful and unfair business practices in the future.

19 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
21 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
22 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
25 unlawful and unfair business practices.

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1 **SECOND CAUSE OF ACTION**

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

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

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

9 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
11 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
12 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

18 57. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
19 including minimum wage compensation and interest thereon, together with the costs of suit.

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

25 59. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
27 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
pay.

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

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

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

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

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

25 65. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
28 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,

1 or the consequences to them, and with the despicable intent of depriving them of their property
2 and legal rights, and otherwise causing them injury in order to increase company profits at the
3 expense of these employees.

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

15 **THIRD CAUSE OF ACTION**

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

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

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

23 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
25 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly
26 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
28 any workweek.

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

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

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

11 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
13 DEFENDANTS and were not paid for all the time they worked, including overtime work.

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

21 74. In committing these violations of the California Labor Code, DEFENDANTS acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

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

28 76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
3 bargaining agreement that would preclude the causes of action contained herein this Complaint.
4 Rather, PLAINTIFF bring this Action on behalf of himself and the CALIFORNIA LABOR SUB-
5 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
6 the State of California.

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

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

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

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

1 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
2 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
3 not prevent these employees from being relieved of all of their duties for the legally required off-
4 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
6 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
8 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
9 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore forfeited meal breaks without additional compensation and in accordance with
11 DEFENDANTS' strict corporate policy and practice.

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

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

20
21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
23 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

11 89. DEFENDANTS further violated California Labor Code §§ 226.7 and the
12 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
13 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
14 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
15 workday that rest period was not provided.

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

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**
23 **against all Defendants)**

24 91. 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 92. Cal. Labor Code § 226 provides that an employer must furnish employees with an
28 "accurate itemized" statement in writing showing:

- a. Gross wages earned;

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

93. When DEFENDANTS did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, missed meal and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time

1 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

23 96. Cal. Lab. Code § 200 provides that:

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

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

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

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

14 99. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 100. Cal. Lab. Code § 203 provides:

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

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

5 103. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 105. PAGA Plaintiffs, and such persons that may be added from time to time who
17 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
18 General Act, bring this Representative Action on behalf of the State of California with respect to
19 himself and all individuals who are or previously were employed by DEFENDANTS and
20 classified as non-exempt employees in California during the time period of TBD until the present
21 (the "AGGRIEVED EMPLOYEES").

22 106. On TBD, PLAINTIFF gave written notice by certified mail to the Labor and
23 Workforce Development Agency (the "Agency") and the employer of the specific provisions
24 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
25 attached hereto and incorporated by this reference herein. The statutory waiting period for
26 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
27 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to
28

1 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 107. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to properly record and pay PAGA
5 Plaintiffs and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
6 overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage
7 statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to timely
8 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
9 including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558,
10 1194, 1197, 1197.1, 1198, and the applicable Industrial Wage Order(s), and thereby gives rise to
11 statutory penalties as a result of such conduct. PAGA Plaintiffs hereby seek recovery of civil
12 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
13 representative of the State of California for the illegal conduct perpetrated on PAGA Plaintiffs
14 and the other AGGRIEVED EMPLOYEES.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF pray for a judgment against each Defendants, jointly and
17 severally, as follows:

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

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- 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, reporting time wages, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
 - a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

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4. On all claims:

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

DATED: _____, 2019

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2019

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

ASA Carlton Inc.
 CIO Business Filings, Inc.
 818 W. Seventh Street, Suite 930
 Los Angeles CA 90017



9590 9402 4720 8344 8094 81

2. Article Number (Transfer from service label)

7018 3090 0000 5110 2212

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X CORPORATION SYSTEM

B. Received by (Printed Name)

818 West Seventh Street
 Suite 930
 Los Angeles, CA 90017

- Agent
- Addressee

C. Date of Delivery

MAY 09 2019

D. Is delivery address different from item 1? Yes

No

Frazier 5.6.19

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

1 Restricted Delivery

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

ASA Holdings, LLC
c/o Scott Hester
5224 Palmero Court
Buford, GA 30518



9590 9402 4720 8344 8094 98

2. Article Number (Transfer from service label)

7018 3090 0000 5110 2229

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Maria Kohl Agent
 Addressee

B. Received by (Printed Name)

Maria Kohl

C. Date of Delivery

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

5-16-19 Frazier

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery