

SUMMONS (CITACION JUDICIAL)

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

BAYPOINTE ENTERPRISES, LLC, a Limited Liability Company; and
DOES 1-50, Inclusive,

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

PERSEUS PORRAS, an individual, on behalf of himself and on behalf of all persons
similarly situated,

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

**CONFORMED COPY
ORIGINAL FILED**

Superior Court of California
County of Los Angeles

SEP 03 2019

Sherri R. Carter, Clerk/Clerk of Court

By Steven Drew, Deputy

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): Los Angeles Superior Court

CASE NUMBER
(Número de caso) **19STCV31015**

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., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

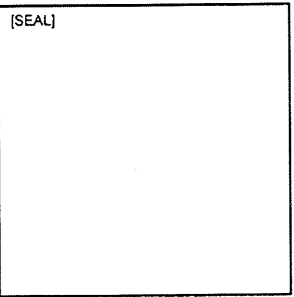
DATE: **SEP 03 2019** Sherri R. Carter, Clerk, by **STEVEN DREW**, Deputy
(Fecha) (Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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

under: <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):	
4. by personal delivery on (date):



SEP 03 2019

Sherri K. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
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15 Attorneys for Plaintiff

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF LOS ANGELES**

18 PERSEUS PORRAS, an individual, on behalf
19 of himself and on behalf of all persons
20 similarly situated,

21 Plaintiff,

22 v.

23 BAYPOINTE ENTERPRISES, LLC, a
24 Limited Liability Company; and DOES 1-50,
25 Inclusive,

26 Defendants.

Case No: **19STCV31015**

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

BY FAX

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Baypointe Enterprises, LLC (“DEFENDANT” or “DEFENDANTS”) is a limited
7 liability company and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT operates an upscale restaurant in Long Beach, California.

10 3. PLAINTIFF was employed by DEFENDANT in California from June 2017 to
11 October 2018 and was at all times relevant mentioned herein classified as a non-exempt employee
12 paid in whole or in part on an hourly basis and entitled to overtime pay and meal and rest periods
13 and payment of minimum and overtime wages.

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

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

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

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
25 and CALIFORNIA CLASS Members to work without paying them for all the time they were
26 under DEFENDANT's control. As a result, the PLAINTIFF and other CALIFORNIA CLASS
27 Members forfeited minimum wage and overtime compensation by regularly working without their
28 time being accurately recorded and without compensation at the applicable minimum wage and

1 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
3 records.

4 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
5 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
6 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
7 CLASS Members were required to perform work as ordered by DEFENDANT for more than five
8 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed to
9 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
10 for some workdays in which these employees were required by DEFENDANT to work ten (10)
11 hours of work. As a result, DEFENDANT's failure to provide PLAINTIFF and the
12 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
13 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS
14 therefore forfeited meal breaks without additional compensation and in accordance with
15 DEFENDANT's strict corporate policy and practice.

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

27 11. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
28 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other

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

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

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

3 14. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
4 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor
5 Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT did not
6 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
7 also failed to compensate PLAINTIFF for him missed meal and rest breaks. The nature of the
8 work performed by the PLAINTIFF did not prevent him from being relieved of all of him duties
9 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
10 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
11 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods
12 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
13 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
14 DEFENDANT has yet to pay PLAINTIFF all of him wages due to him and DEFENDANT has
15 failed to pay any penalty wages owed to him under California Labor Code Section 203. The
16 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

17 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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2 17. 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 DEFENDANT 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 this Complaint and ending on the date as determined by the
8 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 18. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

13 19. DEFENDANT, 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 DEFENDANT systematically failed to record all meal
17 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
18 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
19 permits or suffers to permit this work.

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

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

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

- 5 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
7 in place company policies, practices and procedures that uniformly and
8 systematically failed to record and pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS for all time worked, including minimum wages owed and
10 overtime wages owed for work performed by these employees; and,
- 11 b. Committing an act of unfair competition in violation of the UCL, by failing to
12 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
13 with the legally required meal and rest periods.

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

- 16 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
17 joinder of all such persons is impracticable and the disposition of their claims as a
18 class will benefit the parties and the Court;
- 19 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
20 raised in this Complaint are common to the CALIFORNIA CLASS will apply
21 uniformly to every member of the CALIFORNIA CLASS;
- 22 c. The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
24 the CALIFORNIA CLASS, was classified as a non- exempt employee paid on an
25 hourly basis who was subjected to the DEFENDANT's deceptive practice and
26 policy which failed to provide the legally required meal and rest periods to the
27 CALIFORNIA CLASS and thereby systematically underpaid compensation to
28 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury

1 as a result of DEFENDANT's employment practices. PLAINTIFF and members
2 of the CALIFORNIA CLASS were and are similarly or identically harmed by the
3 same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in
4 by DEFENDANT; and,

- 5 d. The representative PLAINTIFF will fairly and adequately represent and protect
6 the interest of the CALIFORNIA CLASS, and has retained counsel who are
7 competent and experienced in Class Action litigation. There are no material
8 conflicts between the claims of the representative PLAINTIFF and the members
9 of the CALIFORNIA CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
11 CALIFORNIA CLASS Members.

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

- 14 a. Without class certification and determination of declaratory, injunctive, statutory
15 and other legal questions within the class format, prosecution of separate actions
16 by individual members of the CALIFORNIA CLASS will create the risk of:
- 17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA CLASS which would establish incompatible
19 standards of conduct for the parties opposing the CALIFORNIA CLASS;
20 and/or;
 - 21 ii. Adjudication with respect to individual members of the CALIFORNIA
22 CLASS which would as a practical matter be dispositive of interests of the
23 other members not party to the adjudication or substantially impair or
24 impede their ability to protect their interests.
- 25 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
26 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
27 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
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1 DEFENDANT uniformly failed to pay all wages due, for all time worked by the
2 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

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

27 2. Adjudications with respect to individual members of the
28 CALIFORNIA CLASS would as a practical matter be dispositive

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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 DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

25. 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 because the DEFENDANT’s employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

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

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

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THE CALIFORNIA LABOR SUB-CLASS

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

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

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

26 30. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
27 CALIFORNIA LABOR SUB-CLASS Members is impracticable
28

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

- 3 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
5 missed meal and rest breaks in violation of the California Labor Code and
6 California regulations and the applicable California Wage Order;
- 7 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
8 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
9 statements;
- 10 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
11 conduct;
- 12 d. The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA LABOR SUB-CLASS; and
- 14 e. Whether DEFENDANT's conduct was willful.

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

- 17 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
18 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all
19 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
20 Lab. Code § 1194;
- 21 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
22 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
23 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
24 Lab. Code §§ 1194 and 1197;
- 25 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
27 statement in writing showing the corresponding correct amount of wages earned
28 by the employee

- 1 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
2 the other members of the CALIFORNIA CLASS with all legally required off-duty,
3 uninterrupted thirty (30) minute meal breaks;
- 4 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment.

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

- 12 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
14 is impracticable and the disposition of their claims as a class will benefit the parties
15 and the Court;
- 16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
18 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
19 CLASS;
- 20 c. The claims of the representative PLAINTIFF are typical of the claims of each
21 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
23 employee paid on an hourly basis who was subjected to the DEFENDANT's
24 practice and policy which failed to pay the correct amount of wages due to the
25 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
26 a result of DEFENDANT's employment practices. PLAINTIFF and the members
27 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
28

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and,

3 d. The representative PLAINTIFF will fairly and adequately represent and protect
4 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
5 who are competent and experienced in Class Action litigation. There are no
6 material conflicts between the claims of the representative PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS that would make class
8 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
9 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
10 Members.

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

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

17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA LABOR SUB-CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA LABOR SUB-CLASS; or

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

25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR
27 SUB-CLASS, making appropriate class-wide relief with respect to the
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly

1 fails to pay all wages due. Including the correct wages for all time worked by the
2 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
28 legal rights out of fear of retaliation by DEFENDANT, which may

1 adversely affect an individual’s job with DEFENDANT or with a
2 subsequent employer, the Class Action is the only means to assert their
3 claims through a representative; and,

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

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

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

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

20 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
21 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
22 before the Court;

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

26 e. There is a community of interest in obtaining appropriate legal and equitable relief
27 for the acts of unfair competition, statutory violations and other improprieties, and
28 in obtaining adequate compensation for the damages and injuries which

1 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
2 CLASS;

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

18
19 **FIRST CAUSE OF ACTION**

20 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

26 37. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
27 Code § 17021.

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

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

12 39. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 1198, for which this
16 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
17 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
18 competition, including restitution of wages wrongfully withheld.

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

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

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

5 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
7 provide all legally required meal breaks to PLAINTIFF and the other members of the
8 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

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

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

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

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

1 53. 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 54. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a wage less than
5 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

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

1 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
2 are entitled to seek and recover statutory costs.

3
4 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

23 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
25 DEFENDANT and were not paid for all the time they worked, including overtime work.

26 70. 70. DEFENDANT's uniform pattern of unlawful wage and hour practices
27 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
28 whole, as a result of implementing a uniform policy and practice that failed to accurately record
overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and

1 denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
2 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of
3 eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in
4 any workweek.

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

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

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

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

25 75. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
27 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 & 1194,
28 even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS
were required to work, and did in fact work, overtime as to which DEFENDANT failed to

1 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
2 employees.

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

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

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

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

1 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
2 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
4 recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

1 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
2 Order, one additional hour of compensation at each employee’s regular rate of pay for each
3 workday that rest period was not provided.

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

7
8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
10 **(Cal. Lab. Code § 226)**

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

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

16 89. Cal. Labor Code § 226 provides that an employer must furnish employees with an
17 “accurate itemized” statement in writing showing:

- 18 a. Gross wages earned;
- 19 b. Total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of
21 overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission;
- 23 c. The number of piece rate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis;
- 25 d. All deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item;
- 27 e. Net wages earned;
- 28 f. The inclusive dates of the period for which the employee is paid;

- 1 g. The name of the employee and his or her social security number, except that by
- 2 January 1, 2008, only the last four digits of his or her social security number or an
- 3 employee identification number other than a social security number may be shown
- 4 on the itemized statement;
- 5 h. The name and address of the legal entity that is the employer; and
- 6 i. All applicable hourly rates in effect during the pay period and the corresponding
- 7 number of hours worked at each hourly rate by the employee.

8 90. When DEFENDANT did not accurately record PLAINTIFF's and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal. Lab.
10 Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that
11 properly and accurately itemizes all minimum and overtime wages and missed meal and rest
12 period payments owed to PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.
14 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
15 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
16 Code 226 *et seq.*

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

6 92. 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 93. Cal. Lab. Code § 200 provides that:

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

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

19 95. Cal. Lab. Code § 202 provides, in relevant part, that:

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

96. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-
CLASS Members’ employment contract.

97. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance
with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 98. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of wages, to these employees
5 who missed meal and rest breaks, as required by law.

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

12 **EIGHTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code §§ 2698 et seq.]**

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

16 100. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

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

27 102. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to herself
2 and all individuals who are or previously were employed by DEFENDANT as sales persons in
3 California during the time period of June 27, 2018 until the present (the "AGGRIEVED
4 EMPLOYEES").

5 103. On June 27, 2019, PLAINTIFF gave written notice by certified mail to the Labor
6 and Workforce Development Agency (the "Agency") and the employer of the specific
7 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
8 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
9 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
10 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
11 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
12 AGGRIEVED EMPLOYEES as herein defined.

13 104. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
15 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
16 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
17 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
18 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
19 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
20 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
21 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
22 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
23 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

24 105. Some or all of the conduct and violations alleged herein occurred during the PAGA
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
26 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
27 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
28 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by **at least one** Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code
2 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

- 8 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 10 b. An order temporarily, preliminarily and permanently enjoining and restraining
11 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 12 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
13 withheld from compensation due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS; and
- 15 d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund
16 for restitution of the sums incidental to DEFENDANT’s violations due to
17 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
20 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
21 pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for overtime compensation due PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
25 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
- 28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

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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;

- 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; and
- f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

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; and
- b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

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: September 3, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: September 3, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani G. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #21801

June 27, 2019

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

BAYPOINTE ENTERPRISES, LLC.
c/o Dennis L. Lund
6272 East Pacific Coast Highway, Suite A
Long Beach, CA 90803

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Perseus Porras (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Baypointe Enterprises, LLC. (“Defendant”). Plaintiff was employed by Defendant in California from June 2017 to October 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and

theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Perseus Porras

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619) 255-9047
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4 Website: www.zakaylaw.com

5
6 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
7 Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
8 La Jolla, CA 92037
Telephone: (858)551-1223
9 Facsimile: (858) 551-1232
Website: www.bamlawca.com

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**
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1 PERSEUS PORRAS, an individual, on
2 behalf of himself and on behalf of all
3 persons similarly situated,

4 Plaintiff,

5 vs.

6 BAYPOINTE ENTERPRISES, LLC, a
7 Limited Liability Company; and DOES 1
8 through 50, inclusive,

9 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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19
20 Plaintiff Perseus Porras (“PLAINTIFF”) an individual, on behalf of himself and all other
21 similarly situated current and former employees alleges on information and belief, except for
22 his own acts and knowledge which are based on personal knowledge, the following:

23
24 **THE PARTIES**

25 1. Baypointe Enterprises, LLC (“DEFENDANT”) is a limited liability company that
26 at all relevant times mentioned herein conducted and continues to conduct substantial business
27 in the state of California.

28 2. DEFENDANT operates an upscale restaurant in Long Beach, California.

1 3. PLAINTIFF was employed by DEFENDANT from June of 2017 to October of
2 2018 as a Bartender and Server and was at all times classified by DEFENDANT as a non-
3 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
4 periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

12 THE CONDUCT

13
14 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
18 and CALIFORNIA CLASS Members to work without paying them for all the time they were
19 under DEFENDANT's control. As a result, the PLAINTIFF and other CALIFORNIA CLASS
20 Members forfeited minimum wage and overtime compensation by regularly working without
21 their time being accurately recorded and without compensation at the applicable minimum wage
22 and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and
23 other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's
24 business records.

25 9. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
28 other CALIFORNIA CLASS Members were required to perform work as ordered by

1 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
2 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members
3 with a second off-duty meal period for some workdays in which these employees were required
4 by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT's failure to
5 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal
6 breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of
7 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and
8 in accordance with DEFENDANT's strict corporate policy and practice.

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

20 11. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
21 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with complete and accurate wage statements which
23 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
24 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
25 an accurate itemized wage statement in writing showing, among other things, gross wages
26 earned and all applicable hourly rates in effect during the pay period and the corresponding
27 amount of time worked at each hourly rate. Aside, from the violations listed above in this
28 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists

1 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
2 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
3 wage statements which violated Cal. Lab. Code § 226.

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

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

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

1 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
2 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
3 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
4 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
5 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
6 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
7 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
8 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
9 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
10 the sum or value of \$75,000.

11 JURISDICTION AND VENUE

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

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

23 THE CALIFORNIA CLASS

24
25 17. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
28 all individuals who are or previously were employed by DEFENDANT in California and

1 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
2 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
3 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
4 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
5 (\$5,000,000.00).

6 18. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

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

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

25 21. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 22. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

1 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
3 deceptively having in place company policies, practices and procedures
4 that uniformly and systematically failed to record and pay PLAINTIFF
5 and the other members of the CALIFORNIA CLASS for all time worked,
6 including minimum wages owed and overtime wages owed for work
7 performed by these employees; and,

8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods.

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

13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
14 that the joinder of all such persons is impracticable and the disposition of
15 their claims as a class will benefit the parties and the Court;

16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 CLASS will apply uniformly to every member of the CALIFORNIA
19 CLASS;

20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA CLASS, was classified as a non-
23 exempt employee paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy which failed to provide the
25 legally required meal and rest periods to the CALIFORNIA CLASS and
26 thereby systematically underpaid compensation to PLAINTIFF and
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
28 result of DEFENDANT's employment practices. PLAINTIFF and the

1 members of the CALIFORNIA CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive, unfair and pervasive
3 pattern of misconduct engaged in by DEFENDANT; and,

4 (d) The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA CLASS, and has retained
6 counsel who are competent and experienced in Class Action litigation.
7 There are no material conflicts between the claims of the representative
8 PLAINTIFF and the members of the CALIFORNIA CLASS that would
9 make class certification inappropriate. Counsel for the CALIFORNIA
10 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
11 Members.

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

14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA CLASS will
17 create the risk of:

18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,

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

27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
28 act on grounds generally applicable to the CALIFORNIA CLASS, making

1 appropriate class-wide relief with respect to the CALIFORNIA CLASS
2 as a whole in that DEFENDANT uniformly failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

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

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

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

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

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

26 (b) A Class Action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the CALIFORNIA
28 CLASS because in the context of employment litigation a substantial

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the
6 Court;

7 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations and
12 other improprieties, and in obtaining adequate compensation for the
13 damages and injuries which DEFENDANT's actions have inflicted upon
14 the CALIFORNIA CLASS;

15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA CLASS for the injuries sustained;

18 (g) DEFENDANT has acted or refused to act on grounds generally applicable
19 to the CALIFORNIA CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA CLASS as a whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
22 the business records of DEFENDANT; and,

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

27 26. DEFENDANT maintains records from which the Court can ascertain and identify
28 by job title each of DEFENDANT's employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

6 27. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
7 Causes of Action on behalf of a California sub-class, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
9 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
10 to the filing of the complaint and ending on the date as determined by the Court (the
11 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
12 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
13 Members is under five million dollars (\$5,000,000.00).

14 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
18 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
20 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
21 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
22 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
23 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
24 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
25 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

4 30. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 8 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
9 compensation due to members of the CALIFORNIA LABOR SUB-
10 CLASS for missed meal and rest breaks in violation of the California
11 Labor Code and California regulations and the applicable California Wage
12 Order;
- 13 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with accurate
15 itemized wage statements;
- 16 (c) Whether DEFENDANT has engaged in unfair competition by the
17 above-listed conduct;
- 18 (d) The proper measure of damages and penalties owed to the members of the
19 CALIFORNIA LABOR SUB-CLASS; and,
- 20 (e) Whether DEFENDANT's conduct was willful.

21 32. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
22 under California law by:

- 23 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
25 CLASS all wages due for overtime worked, for which DEFENDANT is
26 liable pursuant to Cal. Lab. Code § 1194;
- 27 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
28 accurately pay PLAINTIFF and the members of the CALIFORNIA

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LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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

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

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

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

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

27 2) Adjudication with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS which would as a practical

1 matter be dispositive of interests of the other members not party to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests.

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

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

- 18 1) The interests of the members of the CALIFORNIA LABOR SUB-
19 CLASS in individually controlling the prosecution or defense of
20 separate actions in that the substantial expense of individual
21 actions will be avoided to recover the relatively small amount of
22 economic losses sustained by the individual CALIFORNIA
23 LABOR SUB-CLASS Members when compared to the substantial
24 expense and burden of individual prosecution of this litigation;
- 25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA LABOR SUB-

1 CLASS, which would establish incompatible standards of
2 conduct for the DEFENDANT; and/or,

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

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

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

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

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

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

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Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the

1 members of the CALIFORNIA LABOR SUB-CLASS.

2
3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

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

7 36. 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 37. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
11 Code § 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

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

28 40. By the conduct alleged herein, DEFENDANT’s practices were unlawful and

1 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
2 unscrupulous or substantially injurious to employees, and were without valid justification or
3 utility for which this Court should issue equitable and injunctive relief pursuant to Section
4 17203 of the California Business & Professions Code, including restitution of wages wrongfully
5 withheld.

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

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

19 43. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
21 to provide all legally required meal breaks to PLAINTIFF and the other members of the
22 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

23 44. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
24 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
26 for each workday in which a second off-duty meal period was not timely provided for each ten
27 (10) hours of work.

28 45. PLAINTIFF further demands on behalf of himself and each member of the

1 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
2 duty paid rest period was not timely provided as required by law.

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

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

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

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

23 50. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
24 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
25 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
26 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
27 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
28 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to

1 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

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

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

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

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

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

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

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

57. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,

1 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
2 result of implementing a uniform policy and practice that denies accurate compensation to
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
4 minimum wage pay.

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

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

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

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

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

1 correct minimum wages for their time worked.

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

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

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

1 of this Complaint.

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

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

10 68. Cal. Lab. Code § 510 further provides that employees in California shall not be
11 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
12 unless they receive additional compensation beyond their regular wages in amounts specified
13 by law.

14 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
16 DEFENDANT and were not paid for all the time they worked, including overtime work.

17 70. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
18 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
19 result of implementing a uniform policy and practice that failed to accurately record overtime
20 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
21 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
22 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
23 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
24 workweek.

25 71. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
28 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation

1 of the California Labor Code, the Industrial Welfare Commission requirements and other
2 applicable laws and regulations.

3 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
5 receive full compensation for overtime worked.

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

14 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
16 worked that they are entitled to, constituting a failure to pay all earned wages..

17 75. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
18 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
19 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510
20 & 1194, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
21 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
22 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed
23 by employees.

24 76. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
28 injury in amounts which are presently unknown to them and which will be ascertained

1 according to proof at trial.

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

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

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

28

1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

1 workday that rest period was not provided.

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

6
7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 226]**

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

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

15 89. Cal. Labor Code § 226 provides that an employer must furnish employees with
16 an “accurate itemized” statement in writing showing:

17 (1) gross wages earned,

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

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

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

26 (5) net wages earned,

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

28 (7) the name of the employee and his or her social security number, except that by

1 January 1, 2008, only the last four digits of his or her social security number or an
2 employee identification number other than a social security number may be shown on
3 the itemized statement,

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

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

7 90. When DEFENDANT did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
9 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
10 that properly and accurately itemizes all minimum and overtime wages and missed meal and
11 rest period payments owed to PLAINTIFF and the other members of the CALIFORNIA
12 LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the
13 employees. Aside, from the violations listed above in this paragraph, DEFENDANT failed to
14 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
15 Labor Code 226 *et seq.*

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

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28 **SEVENTH CAUSE OF ACTION**

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For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

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

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

97. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

3 98. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
4 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
5 these employees who missed meal and rest breaks, as required by law.

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

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

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

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

- 28 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes

1 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
2 pursuant to Cal. Code of Civ. Proc. § 382;

3 B) Compensatory damages, according to proof at trial, including compensatory
4 damages for minimum and overtime compensation due PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
6 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
7 statutory rate;

8 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per each member of
10 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
11 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
12 an award of costs for violation of Cal. Lab. Code § 226;

13 D) The wages of all terminated employees from the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;

18 F) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order; and,

20 G) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
22 costs of suit.

23 3. On all claims:

24 A) An award of interest, including prejudgment interest at the legal rate;

25 B) Such other and further relief as the Court deems just and equitable; and,

26 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
27 law, including, but not limited to, pursuant to Labor Code §218.5 & §226.
28

1 Dated: June 12, 2019

ZAKAY LAW GROUP, APLC

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4 By: _____
5 Shani O. Zakay
6 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 12, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiff