

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CHILDREN'S SPECIALISTS OF SAN DIEGO, A MEDICAL GROUP, INC., a California Corporation; and DOES 1-50, Inclusive,

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

JESSICA HORRIGAN, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

03/30/2021 at 12:10:02 PM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

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

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

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

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

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

San Diego Superior Court, Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2021-00014044-CU-0E-CTL

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 04/01/2021
(Fecha)

Clerk, by C. Miranda, Deputy
(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: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



ZAKAY LAW GROUP, APLC

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/30/2021 at 12:10:02 PM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

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Attorneys for Plaintiff

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

JESSICA HORRIGAN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CHILDREN’S SPECIALISTS OF SAN
DIEGO, A MEDICAL GROUP, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2021-00014044-CU-OE-CTL

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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE §§ 2698 *ET SEQ.*

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant CHILDREN’S SPECIALISTS OF SAN DIEGO, A MEDICAL
6 GROUP, INC. (“Defendant” or “DEFENDANT”) is a California Corporation and at all relevant
7 times mentioned herein conducted and continues to conduct substantial and regular business in
8 California.

9 2. DEFENDANT, provides medical services and specializes in providing postpartum
10 medical care to high-risk patients. DEFENDANT operates facilities throughout California,
11 including the San Diego, California location where PLAINTIFF worked.

12 3. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods since October of
14 2015.

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

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their overtime worked.
26 DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and deceptive
27 business practice whereby DEFENDANT retained and continues to retain wages due to
28 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other

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

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

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

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
27 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
28 the time they were under DEFENDANT'S control. Specifically, DEFENDANT required

1 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
2 meal break, as well as before their shift started and after their shift ended. PLAINTIFF was often
3 interrupted by work assignments during her breaks. Indeed there were many days where
4 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
5 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
6 compensation by working without their time being accurately recorded and without compensation
7 at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and
8 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
9 is evidenced by DEFENDANT'S business records.

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
11 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
12 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally
13 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
14 other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct
15 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for working without compensation at the correct rates. DEFENDANT's
17 uniform policy and practice to not pay the members of the CALIFORNIA CLASS the correct
18 minimum and overtime wages for all time worked in accordance with applicable law is evidenced
19 by DEFENDANT's business records.

20 10. State law provides that employees must be paid overtime at one-and-one-half times
21 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
22 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
23 employee's performance.

24 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance goals set by DEFENDANT. However, when calculating the regular rate of
2 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
3 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
4 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the
5 incentive program to potential and new employees as part of the compensation package. Further,
6 DEFENDANT paid PLAINTIFF and other CALIFORNIA CLASS Members compensation in the
7 form of per diem and shift differential compensation. However, DEFENDANT failed to include
8 compensation for per diem and shift differential compensation into the "regular rate of pay" for
9 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
10 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of
11 pay." The failure to do so has resulted in a systematic underpayment of overtime compensation
12 to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

13 12. Additionally, Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all
15 their time worked, meaning the time during which an employee is subject to the control of an
16 employer, including all the time the employee is suffered or permitted to work. DEFENDANT
17 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
18 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
19 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
20 meal break. PLAINTIFF was from time to time interrupted by work assignments. Further,
21 DEFENDANT from time to time required PLAINTIFF and CALIFORNIA CLASS Members to
22 clock out during what was supposed to be their off-duty meal breaks and continue to work off-
23 the-clock. Moreover, DEFENDANT has required PLAINTIFF and other CALIFORNIA CLASS
24 Members to come to work at least ten (10) minutes before their scheduled shifts in order to submit
25 to COVID-19 screenings before clocking in for work. As a result, the PLAINTIFF and other
26 CALIFORNIA CLASS Members forfeited overtime compensation by working without their time
27 being accurately recorded and without compensation at the applicable overtime rates.
28

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

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

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

25 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
26 employees with an accurate itemized wage statement in writing showing, among other things,
27 gross wages earned and all applicable hourly rates in effect during the pay period and the
28 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT

1 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
2 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
3 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
4 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
6 Code § 226.

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

18 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
19 Members as a business expense, were required by DEFENDANT to use their own personal
20 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
21 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
22 their personal cellular phones for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
23 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
24 phones in order to clock in and out for work and to respond to work-related communications. As
25 a result, in the course of their employment with DEFENDANT the PLAINTIFF and other
26 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
27 included, but were not limited to, costs related to the use of their personal cellular phones all on
28 behalf of and for the benefit of DEFENDANT.

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

11 19. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
12 them in the form of two components. One component of PLAINTIFF’s compensation was a base
13 hourly wage. The second component of PLAINTIFF’s compensation was a non-discretionary
14 incentive wage, including per-diem and shift differentia compensation. DEFENDANT paid the
15 incentive wages, so long as PLAINTIFF met certain predefined performance requirements.
16 PLAINTIFF met DEFENDANT’s predefined eligibility performance requirements in various pay
17 periods throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF
18 the incentive wages. During these pay periods in which PLAINTIFF was paid the non-
19 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
20 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s
21 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s accurate
22 overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her
23 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
24 constituted wages within the meaning of the California Labor Code and thereby should have been
25 part of PLAINTIFF’s “regular rate of pay.” As a result of the rigorous work schedule imposed
26 by DEFENDANT, PLAINTIFF was also from time to time unable to take off duty meal and rest
27 breaks and was not fully relieved of duty for her meal and rest periods. PLAINTIFF was required
28 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without

1 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
2 second off-duty meal period each workday in which they was required by DEFENDANT to work
3 ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
4 compensation and in accordance with DEFENDANT’s strict corporate policy and practice. When
5 PLAINTIFF worked overtime in the same pay period they earned incentive wages and/or missed
6 meal and rest breaks, DEFENDANT also provided PLAINTIFF with a paystub that failed to
7 accurately display PLAINTIFF’s correct rates of overtime pay for certain pay periods in violation
8 of Cal. Lab. Code § 226(a). The amount in controversy for PLAINTIFF individually does not
9 exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

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

20 **THE CALIFORNIA CLASS**

21 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
24 individuals who are or previously were employed by Defendant in California and classified as
25 non-exempt employees (the “CALIFORNIA CLASS”) at any time between April 6, 2016 and the
26 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
27 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
28 dollars (\$5,000,000.00).

1 23. On May 29, 2020, due to the impact of the COVID-19 pandemic on California’s
2 judicial branch, the Judicial Council of California amended Emergency Rule Number 9, which
3 currently states that: “(a) Notwithstanding any other law, the statutes of limitations and repose for
4 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1,
5 2020...(b) Notwithstanding any other law, the statutes of limitations and repose for civil causes
6 of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020.”

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

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

23 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
24 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay for
27 time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
28

1 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
2 permitted or suffered to permit this overtime work.

3 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
4 CLASS Member is paid for all time worked. DEFENDANT, however, as a matter of uniform and
5 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
6 PERIOD and still fails to have in place a policy or practice to ensure that each and every
7 CALIFORNIA CLASS Member is paid for all time worked, so as to satisfy their burden. This
8 common business practice applicable to each and every CALIFORNIA CLASS Member can be
9 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
10 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
11 elements of this claim.

12 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all time worked at the applicable rate, as required by California Labor Code §§ 204
15 and 510, *et seq.*

16 29. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
19 California law by:

- 20 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
21 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
22 policies, practices and procedures that failed to pay all minimum and overtime
23 wages due the CALIFORNIA CLASS for all time worked, and failed to accurately
24 record the applicable rates of all overtime worked by the CALIFORNIA CLASS.
- 25 b. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
27 unfairly, and/or deceptively having in place a company policy, practice and
28

1 procedure that failed to correctly compensation due to PLAINTIFF and the
2 members of the CALIFORNIA CLASS; and

3 c. Committing an act of unfair competition in violation of the California Unfair
4 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
5 mandatory meal and rest breaks to PLAINTIFF and the CALIFORNIA CLASS
6 members;

7 d. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
9 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members with necessary expenses incurred in the discharge of their job duties.

11 31. The 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 that the
14 joinder of all such persons is impracticable and the disposition of their claims as a
15 class will benefit the parties 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 CLASS will apply
18 uniformly to every member of the CALIFORNIA CLASS;

19 c. The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
21 the CALIFORNIA CLASS, were subjected to the uniform employment practices
22 of DEFENDANT and was a non-exempt employee paid on an hourly basis and
23 paid additional non-discretionary incentive wages who was subjected to the
24 DEFENDANT’S practice and policy which failed to pay the correct rate of
25 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
26 CALIFORNIA CLASS and thereby systematically under pays overtime
27 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
28 injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the

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

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

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

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

1 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
2 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.

33. 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 34. 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.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
27 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
28 CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any

1 time during the period three (3) years prior to the filing of the complaint and ending on the date
2 as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
3 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
4 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

22 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 26 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
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1 violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;

3 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
4 overtime compensation for overtime worked under the overtime pay requirements
5 of California law;

6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
8 thirty (30) minute meal breaks and rest periods;

9 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
10 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
11 statements;

12 e. Whether DEFENDANT has engaged in unfair competition by the above-listed
13 conduct;

14 f. The proper measure of damages and penalties owed to the members of the
15 CALIFORNIA LABOR SUB-CLASS; and

16 g. Whether DEFENDANT's conduct was willful.

17 40. DEFENDANT, as a matter of company policy, practice and procedure, failed to
18 accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide
19 accurate records of the time worked by these employees. All of the CALIFORNIA LABOR
20 SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on
21 an hourly basis by DEFENDANT according to uniform and systematic company procedures as
22 alleged herein above. This business practice was uniformly applied to each and every member
23 of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
24 adjudicated on a class-wide basis.

25 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

27 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

1 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
2 Lab. Code §§ 1194 and 1197;

- 3 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
4 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
5 pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- 6 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
7 the other members of the CALIFORNIA CLASS with all legally required off-duty,
8 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 9 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
11 statement in writing showing time worked at by the employee;
- 12 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA CLASS Members with necessary expenses incurred in the
14 discharge of their job duties.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
19 is impracticable and the disposition of their claims as a class will benefit the parties
20 and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
23 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
24 CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
27 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
28 employee paid on an hourly basis and paid additional non-discretionary incentive

1 wages who was subjected to the DEFENDANT's practice and policy which failed
2 to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-
3 CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result
4 of DEFENDANT's employment practices. PLAINTIFF and the members of the
5 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
7 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

8 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 48. 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 Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198, and 2802,
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.

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

6 50. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
7 fraudulent in that DEFENDANT’s uniform policy and practice failed to pay PLAINTIFF, and
8 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime worked,
9 and failed to provide the required amount of overtime compensation, pursuant to the applicable
10 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
11 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
12 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

17 52. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
18 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
19 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

25 54. PLAINTIFF further demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
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1 55. By and through the unlawful and unfair business practices described herein,
2 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
3 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
4 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
5 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
6 to unfairly compete against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

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

60. 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.

61. 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.

62. 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.

63. 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 wage less than the minimum so fixed is unlawful.

64. 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.

65. 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.

66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
2 pay.

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

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

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

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

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

27 72. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all

1 time worked and provide them with requisite compensation, DEFENDANT acted and continue
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
3 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
4 or the consequences to them, and with the despicable intent of depriving them of their property
5 and legal rights, and otherwise causing them injury in order to increase company profits at the
6 expense of these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION**

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

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

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

26 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code
28 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to properly

1 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
2 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
3 any workweek.

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

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

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

14 79. 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 80. 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 result
19 of implementing a uniform policy and practice that failed to accurately record overtime worked
20 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and denied
21 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
22 SUB-CLASS for overtime worked, including, the work performed in excess of eight (8) hours in
23 a workday and/or forty (40) hours in any workweek.

24 81. In committing these violations of the California Labor Code, DEFENDANT acted
25 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
26 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
27 laws and regulations.

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

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

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

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

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

27 87. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime

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

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

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

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- 1 h. The name and address of the legal entity that is the employer; and
- 2 i. All applicable hourly rates in effect during the pay period and the corresponding
- 3 number of hours worked at each hourly rate by the employee.

4 100. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
5 wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide
6 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
7 wage statements which failed to show, among other things, the correct time worked, including,
8 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
9 workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code §
10 226 provides that every employer shall furnish each of his or her employees with an accurate
11 itemized wage statement in writing showing, among other things, gross wages earned and all
12 applicable hourly rates in effect during the pay period and the corresponding amount of time
13 worked at each hourly rate. Aside from the violations listed above in this paragraph,
14 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
15 requirements under California Labor Code 226 *et seq.* As a result, from time to time
16 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
17 wage statements which violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

6 102. 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.

9 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

15 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for expenses which included, but were not limited to, costs related to using their
20 personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
22 their personal cell phones to clock in and out for work and to respond to work related
23 communications. DEFENDANT'S uniform policy, practice and procedure was to not reimburse
24 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from
25 using their personal cellular phones for DEFENDANT within the course and scope of their
26 employment for DEFENDANT. These expenses were necessary to complete their principal job
27 duties. DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver of this
28 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
2 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
3 expenses as an employer is required to do under the laws and regulations of California.

4 105. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
6 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
7 at the statutory rate and costs under Cal. Lab. Code § 2802.

8 **EIGHTH CAUSE OF ACTION**

9 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**

10 **(Cal. Lab. Code §§ 2698 *et seq.*)**

11 *(Alleged by PLAINTIFF in his representative capacity against all Defendants)*

12 106. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
13 herein, the prior paragraphs of this Complaint.

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

23 108. PLAINTIFF brings this Representative Action on behalf of the State of California
24 with respect to herself and all of DEFENDANT'S current and former non-exempt employees
25 employed in California ("AGGRIEVED EMPLOYEES") between January 21, 2020 and a future
26 date set by this Court ("PAGA PERIOD").

27 109. To the extent equitable tolling operates to toll the claims asserted by the
28 PLAINTIFF against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

1 110. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to
2 the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled
3 the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for
4 statutes of limitation and repose for civil causes of action that are 180 days or less, or (b) October
5 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

6 111. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
7 similarly situated employees were aggrieved employees of DEFENDANT within the meaning of
8 Labor Code Section 2699(c).

9 112. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
10 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
11 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

12 113. PLAINTIFF complied with the procedures for bringing suit specified in Labor
13 Code Section 2699.3. By certified letter, return receipt requested, dated January 21, 2021,
14 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
15 and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated,
16 including the facts and theories to support the alleged violations (*See Exhibit 1*).

17 114. As of the date of this filing, the LWDA has not provided any notice by certified
18 mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor
19 Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
20 PLAINTIFF may commence and is authorized to pursue this cause of action.

21 115. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
22 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
23 Labor Code Section 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802
24 in the following amounts:

- 25 a. For violations of Labor Code Section 226(a), a civil penalty
26 in the amount of two hundred fifty dollars (\$250) for each
27 AGGRIEVED EMOPLOYEE for any initial violation and one
28 thousand dollars for each subsequent violation [penalty per Labor

1 Code Section 226.3];

2 b. For violations of Labor Code Sections 204, a civil penalty in
3 the amount of one hundred dollars (\$100) for each AGGRIEVED
4 EMPLOYEE for any initial violation and two hundred dollars (\$200)
5 for AGGIEVED EMPLOYEE for each subsequent violation [penalty
6 per Labor Code Section 210];

7 c. For violations of Labor Code Sections 226.7, 510 and 512, a
8 civil penalty in the amount of fifty dollars (\$50) for each underpaid
9 AGGRIEVED EMPLOYEE for the initial violation and hundred
10 dollars (\$100) for each underpaid AGGIEVED EMPLOYEE for each
11 subsequent violation [penalty per Labor Code Section 558];

12 d. For violations of Labor Code Section 2269(a), a civil penalty
13 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
14 EMPLOYEE per violation in an initial citation and one thousand
15 dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent
16 violation [penalty per Labor Code Section 226.3];

17 e. For violations of Labor Code Section 1174(d), a civil penalty
18 in the amount of five hundred (\$500) dollars for per AGGRIEVED
19 EMPLOYEE [penalty per Labor Code Section 1174.5].

20 f. For violations of Labor Code Sections 1194, 1194.2, 1197,
21 1198 and 1199, a civil penalty in the amount of one hundred dollars
22 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
23 violation and two hundred dollars fifty (\$250) per AGGIEVED
24 EMPLOYEE per pay period for each subsequent violation [penalty
25 per Labor Code Section].

26 116. For all provisions of the Labor Code for which civil penalty is not specifically
27 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
28 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred

1 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
2 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
3 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
4 Section 2699(g)(1).

5 **PRAYER FOR RELIEF**

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

- 8 1. On behalf of the CALIFORNIA CLASS:
 - 9 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
10 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - 11 b. An order temporarily, preliminarily and permanently enjoining and restraining
12 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - 13 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
14 withheld from compensation due to PLAINTIFF and the other members of the
15 CALIFORNIA CLASS; and
 - 16 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
17 for restitution of the sums incidental to DEFENDANT'S violations due to
18 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 19 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - 20 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
21 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
22 pursuant to Cal. Code of Civ. Proc. § 382;
 - 23 b. Compensatory damages, according to proof at trial, including compensatory
24 damages for minimum wages and overtime compensation, unreimbursed expenses,
25 and other compensation due PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
27 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - 28 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

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the applicable IWC Wage Order;

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

3. On behalf of the State of California and the AGGRIEVED EMPLOYEES

- a. For reasonable attorneys’ fees and costs of suit to the extent permitted by law, including pursuant to Cal. Cal. Code § 2699, et seq.
- b. For civil penalties to the extent permitted bylaw pursuant to the Labor Code under the Private Attorneys General Act; and
- c. For such other relief as the Court deems just and proper

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 §2802.

DATED: March 30, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED: March 30, 2021

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for Plaintiffs

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #002-157

January 21, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

<p>CHILDREN’S SPECIALISTS OF SAN DIEGO, A MEDICAL GROUP, INC. Jodie Brokowski, Esq. 7960 Birmingham Dr. San Diego, CA 92123</p>	
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Re: Notice of Violations of California Labor Code Sections 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Jessica Horrigan (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Children’s Specialists of San Diego, A Medical Group, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since October of 2015 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 204, 206.5, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, 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 long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Plaintiff

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;
Facsimile: (858) 404-9203

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

8 Attorneys for Plaintiffs

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

11
12 JESSICA HORRIGAN, an individual, on
behalf of herself and on behalf of all persons
13 similarly situated,

14 Plaintiffs,

15 v.

16 CHILDREN'S SPECIALISTS OF SAN
DIEGO, A MEDICAL GROUP, INC., a
17 California Corporation; and DOES 1-50,
Inclusive,

18 Defendants.
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Case No:

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant CHILDREN’S SPECIALISTS OF SAN DIEGO, A MEDICAL
6 GROUP, INC. (“Defendant” or “DEFENDANT”) is a California Corporation and at all relevant
7 times mentioned herein conducted and continues to conduct substantial and regular business in
8 California.

9 2. DEFENDANT, provides medical services and specializes in providing postpartum
10 medical care to high-risk patients. DEFENDANT operates facilities throughout California,
11 including the San Diego, California location where PLAINTIFF worked.

12 3. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods since October of
14 2015.

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

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

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

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

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

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
24 meaning the time during which an employee is subject to the control of an employer, including
25 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
26 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
27 the time they were under DEFENDANT'S control. Specifically, DEFENDANT required
28 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty

1 meal break, as well as before their shift started and after their shift ended. PLAINTIFF was often
2 interrupted by work assignments during her breaks. Indeed there were many days where
3 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
4 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
5 compensation by working without their time being accurately recorded and without compensation
6 at the applicable minimum wage and overtime rates. DEFENDANT’S uniform policy and
7 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
8 is evidenced by DEFENDANT’S business records.

9 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
10 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
11 CLASS for their overtime worked. DEFENDANT systematically, unlawfully and unilaterally
12 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
13 other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct
14 compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
15 forfeited wages due them for working without compensation at the correct rates. DEFENDANT’S
16 uniform policy and practice to not pay the members of the CALIFORNIA CLASS the correct
17 minimum and overtime wages for all time worked in accordance with applicable law is evidenced
18 by DEFENDANT’S business records.

19 10. State law provides that employees must be paid overtime at one-and-one-half times
20 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
21 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
22 employee’s performance.

23 11. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
24 Members’ compensation was DEFENDANT’S non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular rate of

1 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
2 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
3 rate of pay” for purposes of calculating overtime pay. Management and supervisors described the
4 incentive program to potential and new employees as part of the compensation package. Further,
5 DEFENDANT paid PLAINTIFF and other CALIFORNIA CLASS Members compensation in the
6 form of per diem and shift differential compensation. However, DEFENDANT failed to include
7 compensation for per diem and shift differential compensation into the “regular rate of pay” for
8 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by
9 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate of
10 pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation
11 to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

12 12. Additionally, Pursuant to the Industrial Welfare Commission Wage Orders,
13 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all
14 their time worked, meaning the time during which an employee is subject to the control of an
15 employer, including all the time the employee is suffered or permitted to work. DEFENDANT
16 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
17 the time they were under DEFENDANT’s control. Specifically, DEFENDANT required
18 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’s off-duty
19 meal break. PLAINTIFF was from time to time interrupted by work assignments. Further,
20 DEFENDANT from time to time required PLAINTIFF and CALIFORNIA CLASS Members to
21 clock out during what was supposed to be their off-duty meal breaks and continue to work off-
22 the-clock. Moreover, DEFENDANT has required PLAINTIFF and other CALIFORNIA CLASS
23 Members to come to work at least ten (10) minutes before their scheduled shifts in order to submit
24 to COVID-19 screenings before clocking in for work. As a result, the PLAINTIFF and other
25 CALIFORNIA CLASS Members forfeited overtime compensation by working without their time
26 being accurately recorded and without compensation at the applicable overtime rates.
27 DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
28 CLASS Members for all time worked is evidenced by DEFENDANT’s business records.

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

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

23 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
24 employees with an accurate itemized wage statement in writing showing, among other things,
25 gross wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
27 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
28 gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to

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

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

16 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
17 Members as a business expense, were required by DEFENDANT to use their own personal
18 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
19 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
20 their personal cellular phones for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
21 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
22 phones in order to clock in and out for work and to respond to work-related communications. As
23 a result, in the course of their employment with DEFENDANT the PLAINTIFF and other
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
25 included, but were not limited to, costs related to the use of their personal cellular phones all on
26 behalf of and for the benefit of DEFENDANT.

27 18. By reason of this uniform conduct applicable to PLAINTIFF and all
28 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in

1 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
2 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
3 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
4 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour
5 rates is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the
6 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
7 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
8 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

9 19. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
10 them in the form of two components. One component of PLAINTIFF’s compensation was a base
11 hourly wage. The second component of PLAINTIFF’s compensation was a non-discretionary
12 incentive wage, including per-diem and shift differentia compensation. DEFENDANT paid the
13 incentive wages, so long as PLAINTIFF met certain predefined performance requirements.
14 PLAINTIFF met DEFENDANT’s predefined eligibility performance requirements in various pay
15 periods throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF
16 the incentive wages. During these pay periods in which PLAINTIFF was paid the non-
17 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
18 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s
19 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s accurate
20 overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her
21 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
22 constituted wages within the meaning of the California Labor Code and thereby should have been
23 part of PLAINTIFF’s “regular rate of pay.” As a result of the rigorous work schedule imposed
24 by DEFENDANT, PLAINTIFF was also from time to time unable to take off duty meal and rest
25 breaks and was not fully relieved of duty for her meal and rest periods. PLAINTIFF was required
26 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
27 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
28 second off-duty meal period each workday in which they was required by DEFENDANT to work

1 ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional
2 compensation and in accordance with DEFENDANT’s strict corporate policy and practice. When
3 PLAINTIFF worked overtime in the same pay period they earned incentive wages and/or missed
4 meal and rest breaks, DEFENDANT also provided PLAINTIFF with a paystub that failed to
5 accurately display PLAINTIFF’s correct rates of overtime pay for certain pay periods in violation
6 of Cal. Lab. Code § 226(a). The amount in controversy for PLAINTIFF individually does not
7 exceed the sum or value of \$75,000.

8 **JURISDICTION AND VENUE**

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

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

18 **THE CALIFORNIA CLASS**

19 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by Defendant in California and classified as
23 non-exempt employees (the “CALIFORNIA CLASS”) at any time between April 6, 2016 and the
24 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
25 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
26 dollars (\$5,000,000.00).

27 23. On May 29, 2020, due to the impact of the COVID-19 pandemic on California’s
28 judicial branch, the Judicial Council of California amended Emergency Rule Number 9, which

1 currently states that: “(a) Notwithstanding any other law, the statutes of limitations and repose for
2 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1,
3 2020...(b) Notwithstanding any other law, the statutes of limitations and repose for civil causes
4 of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020.”

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

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

21 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay for
25 time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
26 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
27 permitted or suffered to permit this overtime work.

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1 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
2 CLASS Member is paid for all time worked. DEFENDANT, however, as a matter of uniform and
3 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
4 PERIOD and still fails to have in place a policy or practice to ensure that each and every
5 CALIFORNIA CLASS Member is paid for all time worked, so as to satisfy their burden. This
6 common business practice applicable to each and every CALIFORNIA CLASS Member can be
7 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
8 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
9 elements of this claim.

10 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
11 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
12 employee for all time worked at the applicable rate, as required by California Labor Code §§ 204
13 and 510, *et seq.*

14 29. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
19 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
20 policies, practices and procedures that failed to pay all minimum and overtime
21 wages due the CALIFORNIA CLASS for all time worked, and failed to accurately
22 record the applicable rates of all overtime worked by the CALIFORNIA CLASS.
- 23 b. Committing an act of unfair competition in violation of the California Unfair
24 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
25 unfairly, and/or deceptively having in place a company policy, practice and
26 procedure that failed to correctly compensation due to PLAINTIFF and the
27 members of the CALIFORNIA CLASS; and
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- 1 c. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
3 mandatory meal and rest breaks to PLAINTIFF and the CALIFORNIA CLASS
4 members;
- 5 d. Committing an act of unfair competition in violation of the California Unfair
6 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
7 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
8 members with necessary expenses incurred in the discharge of their job duties.

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

- 11 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
12 joinder of all such persons is impracticable and the disposition of their claims as a
13 class will benefit the parties and the Court;
- 14 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
15 raised in this Complaint are common to the CALIFORNIA CLASS will apply
16 uniformly to every member of the CALIFORNIA CLASS;
- 17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
19 the CALIFORNIA CLASS, were subjected to the uniform employment practices
20 of DEFENDANT and was a non-exempt employee paid on an hourly basis and
21 paid additional non-discretionary incentive wages who was subjected to the
22 DEFENDANT’S practice and policy which failed to pay the correct rate of
23 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
24 CALIFORNIA CLASS and thereby systematically under pays overtime
25 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
26 injury as a result of DEFENDANT’s employment practices. PLAINTIFF and the
27 members of the CALIFORNIA CLASS were and are similarly or identically
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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 CLASS, and has retained counsel who are
5 competent and experienced in Class Action litigation. There are no material
6 conflicts between the claims of the representative PLAINTIFF and the members
7 of the CALIFORNIA CLASS that would make class certification inappropriate.
8 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
9 CALIFORNIA CLASS Members.

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

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

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

- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 - 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication

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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.

33. 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 34. 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.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
27 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
28 CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any

1 time during the period three (3) years prior to the filing of the complaint and ending on the date
2 as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
3 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
4 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

22 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 26 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
27 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
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1 violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;

3 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
4 overtime compensation for overtime worked under the overtime pay requirements
5 of California law;

6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
8 thirty (30) minute meal breaks and rest periods;

9 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
10 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
11 statements;

12 e. Whether DEFENDANT has engaged in unfair competition by the above-listed
13 conduct;

14 f. The proper measure of damages and penalties owed to the members of the
15 CALIFORNIA LABOR SUB-CLASS; and

16 g. Whether DEFENDANT's conduct was willful.

17 40. DEFENDANT, as a matter of company policy, practice and procedure, failed to
18 accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide
19 accurate records of the time worked by these employees. All of the CALIFORNIA LABOR
20 SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on
21 an hourly basis by DEFENDANT according to uniform and systematic company procedures as
22 alleged herein above. This business practice was uniformly applied to each and every member
23 of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
24 adjudicated on a class-wide basis.

25 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

27 a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
28 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

1 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
2 Lab. Code §§ 1194 and 1197;

- 3 b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
4 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
5 pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- 6 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
7 the other members of the CALIFORNIA CLASS with all legally required off-duty,
8 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 9 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
11 statement in writing showing time worked at by the employee;
- 12 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA CLASS Members with necessary expenses incurred in the
14 discharge of their job duties.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
19 is impracticable and the disposition of their claims as a class will benefit the parties
20 and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
23 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
24 CLASS;
- 25 c. The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
27 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
28 employee paid on an hourly basis and paid additional non-discretionary incentive

1 wages who was subjected to the DEFENDANT's practice and policy which failed
2 to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-
3 CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result
4 of DEFENDANT's employment practices. PLAINTIFF and the members of the
5 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
7 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

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

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

8 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 48. 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 Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198, and 2802,
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 49. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime worked,
6 and failed to provide the required amount of overtime compensation, pursuant to the applicable
7 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
8 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
9 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

10 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
12 other members of the CALIFORNIA CLASS to be underpaid during their employment with
13 DEFENDANT.

14 52. By the conduct alleged herein, DEFENDANT's practices were also unfair and
15 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
16 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

25 55. By and through the unlawful and unfair business practices described herein,
26 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
27 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
28 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the

1 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
2 to unfairly compete against competitors who comply with the law.

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

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

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

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

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SECOND CAUSE OF ACTION

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

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

60. 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.

61. 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.

62. 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.

63. 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 wage less than the minimum so fixed is unlawful.

64. 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.

65. 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.

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

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

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

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

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

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

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

28 76. 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.

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

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

9 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
11 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

26 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
27 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
bargaining agreement that would preclude the causes of action contained herein this Complaint.

1 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
2 CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by
3 the State of California.

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

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16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

15 **(Cal. Lab. Code § 226)**

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

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

21 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
22 “accurate itemized” statement in writing showing:

- 23 a. Gross wages earned;
- 24 b. Total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission;
- 28 c. The number of piece rate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis;

- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct time worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

101. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

1 expended calculating the time worked and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
4 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
5 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
6 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
7 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
8 member of the CALIFORNIA LABOR SUB-CLASS herein).

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§ 2802)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
14 **DEFENDANT)**

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

18 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

24 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
25 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
27 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28 CLASS members for expenses which included, but were not limited to, costs related to using their
personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use

1 their personal cell phones to clock in and out for work and to respond to work related
2 communications. DEFENDANT’S uniform policy, practice and procedure was to not reimburse
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from
4 using their personal cellular phones for DEFENDANT within the course and scope of their
5 employment for DEFENDANT. These expenses were necessary to complete their principal job
6 duties. DEFENDANT is estopped by DEFENDANT’S conduct to assert any waiver of this
7 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
8 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
9 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

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

15
16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

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

1 PLAINIFF and to the other members of the CALIFORNIA CLASS.

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

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
4 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
5 pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for minimum wages and overtime compensation, unreimbursed expenses,
8 and other compensation due PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
10 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 11 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
14 which a violation occurs and one hundred dollars (\$100) per member of the
15 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226; and
- 18 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
19 CLASS as a penalty from the due date thereof at the same rate until paid or until an
20 action therefore is commenced, in accordance with Cal. Lab. Code § 203.

21 3. On all claims:

- 22 a. An award of interest, including prejudgment interest at the legal rate;
- 23 b. Such other and further relief as the Court deems just and equitable; and
- 24 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
25 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
26 §2802.

27 ///

1 DATED: January __, 2021

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ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: January __, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs