

**SUMMONS
(CITACION JUDICIAL)**

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

GUARDIAN ANGEL HOME CARE, INC., a Michigan Corporation;
and DOES 1-50, Inclusive,

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

LUIS DE JESUS, an individual, on behalf of himself 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

06/18/2020 at 06:13:53 PM

Clerk of the Superior Court
By Jose Hernandez, 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):

37-2020-00021049-CU-OE-CTL

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203

Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE: 06/19/2020
(Fecha)

Clerk, by _____
(Secretario)

J. Hernandez
J. Hernandez

_____, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

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



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Shani O. Zakay (State Bar #277924)
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Superior Court of California,
County of San Diego
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5 **JCL LAW FIRM**
Jean-Claude Lapuyade, Esq.
6 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
7 Telephone: (619) 599-8292
8 Facsimile: (619) 599-8291
Website: www.jcl-lawfirm.com

9 Attorneys for Plaintiff

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

12 LUIS DE JESUS, an individual, on behalf of
13 himself and on behalf of all persons similarly
14 situated,

15 Plaintiff,

16 v.

17 GUARDIAN ANGEL HOME CARE, INC., a
Michigan Corporation; and DOES 1-50,
18 Inclusive,

19 Defendants.

Case No: 37-2020-00021049-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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802

DEMAND FOR A JURY TRIAL

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

4 **THE PARTIES**

5 1. Defendant Guardian Angel Home Care, Inc. (“DEFENDANT”) is a Michigan
6 corporation that at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business in the state of California.

8 2. PLAINTIFF was employed by DEFENDANT in California from January 2019 to
9 February 2020 as a nurse, and was at all times classified by DEFENDANT as a non-exempt
10 employee, paid on a piece-rate basis, and entitled to the legally required meal and rest periods
11 and payment of minimum and overtime wages due for all time worked. PLAINTIFF was paid
12 by piece-rate only while he was performing visits for DEFENDANT in accordance with
13 DEFENDANT’s compensation package. Importantly, PLAINTIFF was not provided with
14 minimum wages for his non-production work time. PLAINTIFF also did not receive paid rest
15 breaks as required by California law. DEFENDANT failed to pay PLAINTIFFS the correct
16 amount of compensation because DEFENDANT established an illegal pay practice of paying
17 PLAINTIFF on a piece rate basis when conducting visits at with patients assigned by
18 DEFENDANT. DEFENDANT however failed to pay minimum wages for compensable time
19 worked, including time spent traveling between visits, and time spent for filling out charts
20 before/after visits. DEFENDANT also failed to pay PLAINTIFF any overtime wages for all
21 overtime worked, thereby uniformly resulting in PLAINTIFF being underpaid for all time
22 worked during his employment, including overtime worked. To date, DEFENDANT has not
23 fully and timely paid the PLAINTIFF for all his wages still owed to them or any penalty wages
24 owed to them under California Labor Code § 203.

25 3. PLAINTIFF brings this Class Action on behalf of himself and a California class,
26 defined as all persons who are or previously were employed by DEFENDANT in California
27 who were paid in whole or in part on a piece rate basis (the “CALIFORNIA CLASS”) at any
28 time during the period beginning April 6, 2016 and ending on the date as determined by the

1 Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate
2 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

23 6. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3 **THE CONDUCT**

4 7. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
5 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
6 worked, meaning the time during which an employee is subject to the control of an employer,
7 including all the time the employee is suffered or permitted to work. DEFENDANT required
8 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
9 they were under DEFENDANT's control. Importantly, PLAINTIFF was not provided with
10 minimum wages for all of his non-visit work time when DEFENDANT only paid PLAINTIFF
11 and other CALIFORNIA CLASS Members a flat piece rate per visit, regardless of how many
12 hours were worked, and regardless of how much time was spent working before or after the
13 visit. PLAINTIFF also did not receive paid rest breaks as required by California law when being
14 paid a piece rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA
15 CLASS Members forfeited minimum wage and overtime compensation by regularly working
16 without their time being accurately recorded and without compensation at the applicable
17 minimum wage and overtime rates, or separate compensation for rest breaks. DEFENDANT's
18 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
19 for all time worked is evidenced by DEFENDANT's business records.

20 8. As a result of their rigorous work schedules and DEFENDANT's understaffing,
21 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take
22 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
23 other CALIFORNIA CLASS Members were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during some shifts without receiving an off-duty
25 meal break as evidenced by DEFENDANT's business records. PLAINTIFF and other members
26 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation
27 and in accordance with DEFENDANT's strict corporate policy and practice.

28

1 9. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
3 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
4 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
5 from time to time, a first and second rest period of at least ten (10) minutes for some shifts
6 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
7 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
8 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
9 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
10 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
11 periods by DEFENDANT and DEFENDANT's managers. In addition, because of
12 DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a
13 flat rate per-visit only), DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA
14 CLASS Members for their rest periods as required by the applicable Wage Order and Labor
15 Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
16 PLAINTIFF and the other CALIFORNIA CLASS Members when they were paid piece rate pay
17 only. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
18 CLASS Members with all the legally required paid rest periods is evidenced by
19 DEFENDANT's business records.

20 10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
21 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,
22 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
23 CLASS with complete and accurate wage statements which failed to show, among other things,
24 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab.
25 Code § 226 provides that every employer shall furnish each of his or her employees with an
26 accurate itemized wage statement in writing showing, among other things, gross wages earned
27 and all applicable hourly rates in effect during the pay period and the corresponding amount of
28 time worked at each hourly rate. Aside from the violations listed above in this paragraph,

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

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

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

26 13. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
28 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT

1 did not have a policy or practice which provided timely off-duty meal and rest breaks to
2 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The
3 nature of the work performed by the PLAINTIFF did not prevent him from being relieved of all
4 of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
5 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
6 business records. As a result of DEFENDANT not accurately recording all missed meal and rest
7 periods and/or the correct overtime rate, and/or separately compensated rest breaks, the wage
8 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
9 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his
10 overtime wages due to him and DEFENDANT has failed to pay any penalty wages owed to him
11 under California Labor Code Section 203 and/or 204. The amount in controversy for
12 PLAINTIFF individually does not exceed the sum or value of \$75,000.

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

24 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT'S benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cell phones to conduct work related business. As a result, in
3 the course of their employment with DEFENDANT the PLAINTIFF and other members of the
4 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
5 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
6 benefit of DEFENDANT.

7 **JURISDICTION AND VENUE**

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

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

17 **THE CALIFORNIA CLASS**

18 18. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
21 persons who are or previously were employed by DEFENDANT in California who were paid in
22 whole or in part on a piece rate basis (the "CALIFORNIA CLASS") at any time during the
23 period beginning April 6, 2016 and ending on the date as determined by the Court (the
24 "CALIFORNIA CLASS PERIOD") The amount in controversy for the aggregate claim of the
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

26 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

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

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

17 22. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
23 in place company policies, practices and procedures that uniformly and
24 systematically failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages owed and
26 overtime wages owed for work performed by these employees;

- 1 b. Committing an act of unfair competition in violation of the UCL, by failing to
- 2 provide mandatory meal and/or rest breaks to PLAINTIFF and the
- 3 CALIFORNIA CLASS members; and
- 4 c. Committing an act of unfair competition in violation of the UCL, by failing to
- 5 separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for
- 6 their rest breaks.

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

- 9 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
- 10 joinder of all such persons is impracticable and the disposition of their claims as
- 11 a class will benefit the parties and the Court;
- 12 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 13 raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 14 uniformly to every member of the CALIFORNIA CLASS;
- 15 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 16 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
- 17 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
- 18 an hourly basis who was subjected to the DEFENDANT’s deceptive practice and
- 19 policy which failed to provide the legally required meal and rest periods to the
- 20 CALIFORNIA CLASS and thereby systematically underpaid compensation to
- 21 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
- 22 as a result of DEFENDANT’s employment practices. PLAINTIFF and the
- 23 members of the CALIFORNIA CLASS were and are similarly or identically
- 24 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
- 25 misconduct engaged in by DEFENDANT; and
- 26 d. The representative PLAINTIFF will fairly and adequately represent and protect
- 27 the interest of the CALIFORNIA CLASS, and have retained counsel who are
- 28 competent and experienced in Class Action litigation. There are no material

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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.

25. 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 to members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT’s policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental

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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 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

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

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

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

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

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

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

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

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

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

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

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 28. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and
22 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
24 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning on April 6,
25 2017 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-
26 CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for
27 the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
28 dollars (\$5,000,000.00).

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

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

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

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

- 23 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
24 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
25 minimum wages, overtime wages, missed meal and rest breaks in violation of the
26 California Labor Code and California regulations and the applicable California
27 Wage Order;

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- b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- e. Whether DEFENDANT’s conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;

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

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

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

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

17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
20 employee paid on an hourly basis who was subjected to the DEFENDANT's
21 practice and policy which failed to pay the correct amount of wages due to the
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
23 a result of DEFENDANT's employment practices. PLAINTIFF and the members
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
25 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
26 misconduct engaged in by DEFENDANT; and

27 d. The representative PLAINTIFF will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained

1 counsel who are competent and experienced in Class Action litigation. There are
2 no material conflicts between the claims of the representative PLAINTIFF and
3 the members of the CALIFORNIALABOR SUB-CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
6 Members.

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

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

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA LABOR SUB-CLASS which would establish
15 incompatible standards of conduct for the parties opposing the
16 CALIFORNIA LABOR SUB-CLASS; or

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

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR
23 SUB-CLASS, making appropriate class-wide relief with respect to the
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
25 uniformly fails to pay all wages due. Including the correct wages for all time
26 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
27 by law;

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

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

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

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

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

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

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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.

36. 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;
- 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

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

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

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

27 39. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

10 40. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
14 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

23 42. By the conduct alleged herein, DEFENDANT's practices were deceptive and
24 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
25 mandated meal and rest periods and the required amount of compensation for missed meal and
26 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
27 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
28 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable

1 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
2 withheld.

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

7 44. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
10 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

27 53. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS
3 Members.

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

6 55. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
8 than the minimum so fixed is unlawful.

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

11 57. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of time they worked, and instead paying PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein,
15 DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely
16 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
17 SUB-CLASS.

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

23 59. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculated the amount of time worked and consequently underpaid the actual time
25 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 60. 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
3 receive the minimum wage compensation for all their time worked for DEFENDANT.

4 61. 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
6 than they were entitled to, constituting a failure to pay all earned wages.

7 62. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
8 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for the true time they worked, PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
11 injury in amounts which are presently unknown to them and which will be ascertained
12 according to proof at trial.

13 63. DEFENDANT knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
15 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
17 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
18 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
19 correct minimum wages for their time worked.

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

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

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

9 71. 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 72. DEFENDANT's uniform pattern of unlawful wage and hour practices
13 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
14 whole, as a result of implementing a uniform policy and practice that failed to accurately record
15 time worked, including overtime worked by PLAINTIFF and other CALIFORNIA LABOR
16 SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
18 overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in
19 a workday, and/or forty (40) hours in any workweek.

20 73. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
23 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
24 California Labor Code, the Industrial Welfare Commission requirements and other applicable
25 laws and regulations.

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

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

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

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

19 78. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
21 CLASS for all overtime worked by these employees, PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
23 injury in amounts which are presently unknown to them and which will be ascertained
24 according to proof at trial.

25 79. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
27 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
28 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,

1 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
2 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
3 overtime worked.

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

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

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1 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
2 business records.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

13 **(Cal. Lab. Code § 226)**

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

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

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

- 21 a. Gross wages earned,
- 22 b. (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment
24 of overtime under subdivision (a) of Section 515 or any applicable order
25 of the Industrial Welfare Commission,
- 26 c. the number of piecerate units earned and any applicable piece rate if the
27 employee is paid on a piece-rate basis,
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- 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 of an employee identification number other than 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.

92. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.

93. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according

1 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
2 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN DUE**

5 **(Cal. Lab. Code § 203)**

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

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

11 95. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

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

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

27 Notwithstanding any other provision of law, an employee who quits without providing a
28 72-hour notice shall be entitled to receive payment by mail if he or she so requests and

1 designates a mailing address. The date of the mailing shall constitute the date of
2 payment for purposes of the requirement to provide payment within 72 hours of the
3 notice of quitting.

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

6 99. Cal. Lab. Code § 203 provides:

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

12 100. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
13 CLASS Members terminated and DEFENDANT has not tendered payment of wages to these
14 employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal
15 and rest breaks, as required by law.

16 101. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
17 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
18 demand up to thirty days of pay as penalty for not paying all wages due at time of termination
19 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
20 PERIOD, and demand an accounting and payment of all wages due, plus interest and statutory
21 costs as allowed by law.

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1 **SIXTH 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 **Defendants)**

6 102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of 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
20 their 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 for work-related business. DEFENDANT’S uniform policy, practice
23 and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
24 members for expenses resulting from using their personal cellular phones for DEFENDANT
25 within the course and scope of their employment for DEFENDANT. These expenses were
26 necessary to complete their principal job duties. DEFENDANT are estopped by
27 DEFENDANT’S conduct to assert any waiver of this expectation. Although these expenses
28 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-

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

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

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

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


- 23 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
24 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
25 action pursuant to Cal. Code of Civ. Proc. § 382;
- 26 b. Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum wages, overtime compensation, unreimbursed expenses,
28 and separately owed rest periods, due to PLAINTIFF and the other members of

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- the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: June 18, 2020

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: June 18, 2020

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF