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

13 NICOLAI LAGUATAN, an individual, on
14 behalf of himself and on behalf of all persons
15 similarly situated,

16 Plaintiff,

17 v.

18 PREVENT LIFE SAFETY SERVICES, INC.,
a Corporation; and DOES 1-50, Inclusive,

19 Defendants.

Case No: 37-2018-00057434-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

DEMAND FOR A JURY TRIAL

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant PREVENT LIFE SAFETY SERVICES, INC. (“DEFENDANT”) is a
8 corporation and at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California.

10 2. DEFENDANT, sometimes doing business as “PREVENT LSS,” provides fire
11 barrier management and code compliance services. DEFENDANT operate locations in
12 Southern and Northern California, with its headquarters located in Livermore, California.

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from March of 2016 to October of
15 2018. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANTS as a
16 non-exempt employee paid in whole or in part on an hourly basis.

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

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

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

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

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

23 **THE CONDUCT**

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

1 they were under DEFENDANT's control. As a result, the PLAINTIFF and other
2 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
3 regularly working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not
5 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
6 by DEFENDANTS' business records.

7 9. DEFENDANT consistently required PLAINTIFF and CALIFORNIA CLASS
8 Members to work off the clock without paying them for all the time they were under
9 DEFENDANT's control performing pre-shift and post-shift duties. Before PLAINTIFF and
10 CALIFORNIA CLASS Members "scheduled" start times, DEFENDANT required PLAINTIFF
11 and CALIFORNIA CLASS Members to travel to clock into work, and travel into job locations.
12 DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members for the first
13 hour and last hour of travel to and from the job sites.

14 10. PLAINTIFF and CALIFORNIA CLASS Members would drive to their first stop
15 for the day in the company owned vehicles or in their own vehicle after checking in at
16 DEFENDANT's location. One of the work duties of PLAINTIFF and the CALIFORNIA
17 CLASS Members was the transporting of this vehicle and equipment to the scheduled location.
18 While traveling to their first location that was assigned to them by DEFENDANT, PLAINTIFF
19 and CALIFORNIA CLASS Members were not allowed to conduct personal business and were
20 under the control of DEFENDANT. Only after traveling for one hour to the first job location
21 for the day they began receiving compensation for the travel time. Similarly, one of the work
22 duties of PLAINTIFF and the CALIFORNIA CLASS Members was the transporting of the
23 company vehicle and equipment back from the scheduled location to the company's designated
24 location. While traveling to back from their last location that was assigned to them by
25 DEFENDANT, PLAINTIFF and CALIFORNIA CLASS Members were not allowed to conduct
26 personal business and were under the control of DEFENDANT. Only after traveling for one
27 hour from the last job location for the day they began receiving compensation for the travel
28 time. PLAINTIFF and the CALIFORNIA CLASS Members were specifically subject to a

1 travel policy that instructed them that they will not receive compensation for the first and last
2 hour of travel time every day. As a result, PLAINTIFF and CALIFORNIA CLASS Members
3 were not compensated by DEFENDANT for this required travel time worked.

4 11. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
5 hours worked by regularly working without their time being accurately recorded and without
6 compensation at the applicable overtime rates. DEFENDANT'S uniform policy and practice
7 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all hours worked,
8 including overtime hours worked, is evidenced by DEFENDANT'S business records.

9 12. In sum, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA CLASS Members consistently performed work off-the-clock without the legally
11 required minimum and/or overtime compensation for such work. This off-the-clock work was
12 performed as a result of written common-policies applicable to all CALIFORNIA CLASS
13 Members. DEFENDANT knew that this work was being performed by PLAINTIFF and the
14 CALIFORNIA CLASS Members without compensation. As a result, the PLAINTIFF and the
15 other members of the CALIFORNIA CLASS forfeited hours worked by regularly working
16 before the start of their scheduled shift and after the end of their scheduled shift without their
17 work being accurately recorded and without compensation. DEFENDANT'S conduct as
18 alleged herein was willful, intentional and not in good faith.

19 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
20 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
21 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to
22 accurately calculate wages for overtime worked by PLAINTIFFS and other members of the
23 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime
24 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
25 forfeited wages due them for working overtime without compensation at the correct overtime
26 rates. DEFENDANT's uniform policy and practice to not pay the members of the
27 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with
28 applicable law is evidenced by DEFENDANT's business records.

1 14. State law provides that employees must be paid overtime at one-and-one-
2 halftimes their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members
3 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

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

25 17. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
26 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
27 without being provided ten (10) minute rest periods. Further, these employees were denied their
28 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)

1 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
2 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
3 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
4 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
5 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
6 Members were periodically denied their proper rest periods by DEFENDANT and
7 DEFENDANT's managers.

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

21 19. By reason of this uniform conduct applicable to PLAINTIFF and all
22 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
24 *seq.*(the "UCL"), by engaging in a company-wide policy and procedure which failed to
25 accurately calculate and record the correct overtime rate for the overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
27 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
28 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly

1 calculate and/or pay all required overtime compensation for work performed by the members of
2 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
3 thereunder as herein alleged.

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

17 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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2 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
5 individuals who are or previously were employed by DEFENDANT in California and classified
6 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
7 beginning four (4) years prior to the filing of this Complaint and ending on the date as
8 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
9 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
10 (\$5,000,000.00).

11 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
13 accordingly.

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

27 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
28 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
3 calculate and record time worked by PLAINTIFF and the other members of the CALIFORNIA
4 CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to
5 perform this work and permitted or suffered to permit this overtime work.

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

16 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
17 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
18 employee for all time and overtime worked at the applicable rate, as required by California
19 Labor Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
20 the overtime compensation for any member of the CALIFORNIA CLASS properly recalculated
21 so as to include all earnings in the overtime compensation calculation as required by California
22 Labor Code §§ 510, *et seq.*

23 29. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
26 California law by:

- 27 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
28 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place

1 company policies, practices and procedures that failed to pay all wages due the
2 CALIFORNIA CLASS for all time worked, and failed to accurately record the
3 applicable rates of all overtime worked by the CALIFORNIA CLASS;

4 b. Committing an act of unfair competition in violation of the California Unfair
5 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
6 unfairly, and/or deceptively having in place a company policy, practice and
7 procedure that failed to correctly calculate the time worked, and the overtime
8 compensation due to PLAINTIFF and the members of the CALIFORNIA
9 CLASS;

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

14 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
15 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
16 company policies, practices and procedures that uniformly and systematically
17 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
18 CLASS for all time worked, including minimum wages owed and overtime
19 wages owed for work performed by these employees.

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

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

25 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
26 raised in this Complaint are common to the CALIFORNIA CLASS will apply
27 uniformly to every member of the CALIFORNIA CLASS;

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1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, was subjected to the uniform employment
4 practices of DEFENDANT and was a non-exempt employee paid on an hourly
5 basis and paid additional non-discretionary incentive wages who was subjected
6 to the DEFENDANT's practice and policy which failed to pay for all time work
7 and failed to pay the correct rate of overtime wages due to the CALIFORNIA
8 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
9 systematically under pays the CALIFORNIA CLASS. PLAINTIFF sustained
10 economic injury as a result of DEFENDANT's employment practices.
11 PLAINTIFF and the members of the CALIFORNIA CLASS were and are
12 similarly or identically harmed by the same unlawful, deceptive, unfair and
13 pervasive pattern of misconduct engaged in by DEFENDANT; and

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

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

23 a. Without class certification and determination of declaratory, injunctive, statutory
24 and other legal questions within the class format, prosecution of separate actions
25 by individual members of the CALIFORNIA CLASS will create the risk of:

26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA CLASS which would establish incompatible
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- standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;
- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due, including the correct overtime rate, for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the 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

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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 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:

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- 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;
- d. PLAINTIFF, and the other CALIFORNIA 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 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 CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and

1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA CLASS.

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

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11 **THE CALIFORNIA LABOR SUB-CLASS**

12
13 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
14 causes of Action on behalf of a California sub-class, defined as all members of the
15 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
16 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
17 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
18 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
19 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
20 (\$5,000,000.00).

21 36. 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 failed to correctly calculate the time
25 worked, and the overtime compensation for the overtime worked by PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the
27 benefit of this work, required employees to perform this work and permitted or suffered to
28 permit this work and overtime work. DEFENDANT have uniformly denied these

1 CALIFORNIA LABOR SUB-CLASS Members minimum wages and overtime wages at the
2 correct amount to which these employees are entitled in order to unfairly cheat the competition
3 and unlawfully profit. To the extent equitable tolling operates to toll claims by the
4 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
5 SUB-CLASS PERIOD should be adjusted accordingly.

6 37. DEFENDANT maintains records from which the Court can ascertain and
7 identify by name and job title, each of DEFENDANT's employees who have been
8 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
9 practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the
10 complaint to include any additional job titles of similarly situated employees when they have
11 been identified.

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

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

- 16 a. Whether DEFENDANT unlawfully failed to pay the CALIFORNIA LABOR
17 SUB-CLASS for all time worked in violation of the California Labor Code and
18 California regulations and the applicable California Wage Order;
- 19 b. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
20 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
21 violation of the California Labor Code and California regulations and the
22 applicable California Wage Order;
- 23 c. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
24 to overtime compensation for overtime worked under the overtime pay
25 requirements of California law;
- 26 d. Whether DEFENDANT failed to accurately record the applicable overtime rates
27 for all overtime worked PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS;

- 1 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 2 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 3 thirty (30) minute meal breaks and rest periods;
- 4 f. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
- 5 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 6 statements;
- 7 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 8 conduct;
- 9 h. The proper measure of damages and penalties owed to the members of the
- 10 CALIFORNIA LABOR SUB-CLASS; and
- 11 i. Whether DEFENDANT's conduct was willful.

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

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

- 23 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
- 25 correct overtime pay for which DEFENDANTS are liable pursuant to Cal. Lab.
- 26 Code § 1194 & § 1198;
- 27 b. 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
2 Cal. Lab. Code §§ 1194 and 1197;

3 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
4 and the other members of the CALIFORNIA CLASS with all legally required
5 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
6 rest breaks;

7 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
9 statement in writing showing all accurate and applicable overtime rates in effect
10 during the pay period and the corresponding amount of time worked at each
11 overtime rate 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; and

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

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

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

27 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
28 raised in this Complaint are common to the CALIFORNIA LABOR SUB-

1 CLASS and will apply uniformly to every member of the CALIFORNIA
2 LABOR SUB-CLASS;

3 c. The claims of the representative PLAINTIFF are typical of the claims of each
4 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
5 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
6 employee paid on an hourly basis and paid additional non-discretionary incentive
7 wages who was subjected to the DEFENDANT's practice and policy which
8 failed to pay the correct rate of overtime wages due to the CALIFORNIA
9 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
10 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
12 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
13 of misconduct engaged in by DEFENDANT; and

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

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

24 a. Without class certification and determination of declaratory, injunctive, statutory
25 and other legal questions within the class format, prosecution of separate actions
26 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
27 the risk of:
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- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or
8 substantially impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
13 uniformly failed to pay all wages due, including the correct overtime rate, for all
14 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
15 required by law;
- 16 c. Common questions of law and fact predominate as to the members of the
17 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
18 violations of California Law as listed above, and predominate over any question
19 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
20 Class Action is superior to other available methods for the fair and efficient
21 adjudication of the controversy, including consideration of:
- 22 i. The interests of the members of the CALIFORNIA LABOR SUB-
23 CLASS in individually controlling the prosecution or defense of separate
24 actions in that the substantial expense of individual actions will be
25 avoided to recover the relatively small amount of economic losses
26 sustained by the individual CALIFORNIA LABOR SUB-CLASS
27 Members when compared to the substantial expense and burden of
28 individual prosecution of this litigation;

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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,

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;

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- 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 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 have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of 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

1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA LABOR SUB-CLASS.

5
6 **FIRST CAUSE OF ACTION**

7 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

26 48. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which this
Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §

1 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
2 competition, including restitution of wages wrongfully withheld.

3 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and
4 unfair in that these practices violated public policy, were immoral, unethical, oppressive
5 unscrupulous or substantially injurious to employees, and were without valid justification or
6 utility for which this Court should issue equitable and injunctive relief pursuant to Section
7 17203 of the California Business & Professions Code, including restitution of wages wrongfully
8 withheld.

9 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
10 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
11 other members of the CALIFORNIA CLASS, wages due for overtime worked, failed to
12 accurately to record the applicable rate of all overtime worked, and failed to provide the
13 required amount of overtime compensation due to a systematic miscalculation of the overtime
14 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
15 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
16 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
17 including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
3 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly
4 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
5 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
6 any workweek.

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

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

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

17 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
18 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
19 amount of overtime worked and correct applicable overtime rate for the amount of overtime
20 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
21 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
23 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
24 all overtime worked.

25 80. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
27 result of implementing a uniform policy and practice that denied accurate compensation to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all
overtime worked, including, the work performed in excess of eight (8) hours in a workday
and/or forty (40) hours in any workweek.

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

7 82. 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
9 receive full compensation for all overtime worked.

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

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

21 85. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
23 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
24 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by
27 DEFENDANT's business records and witnessed by employees.

28 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
CLASS for the true time they worked, PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

90. 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.

91. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-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 DEFENDANT for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

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

94. 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.

95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) 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. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
3 **(Cal. Lab. Code § 226)**

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

6 98. 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 99. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

6 102. 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 § 200 provides that:

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

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

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

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

106. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
SUB-CLASS Members’ employment contract.

107. Cal. Lab. Code § 203 provides:

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

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

2 108. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
3 CLASS Members terminated and DEFENDANT has not tendered payment of minimum wages
4 and overtime wages, to these employees who actually worked overtime, as required by law.

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

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12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and
14 severally, as follows:

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

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pursuant to Cal. Code of Civ. Proc. § 382;

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: November 13, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: November 13, 2018

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff