

**SUMMONS
(CITACION JUDICIAL)**

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

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

ONEMAIN GENERAL SERVICES CORPORATION., a Delaware Corporation; and DOES 1 through 50, Inclusive

Electronically Filed
6/8/2020 8:39 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Joshua Teixeira, Deputy

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

RACHEL LATIN, an individual, on behalf of herself, and on behalf of all persons similarly situated

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):

Stanislaus County Superior Court - City Towers Courthouse
801 10th Street, 4th Floor
Modesto, CA 95354

CASE NUMBER: CV-20-002498
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE: 6/8/2020 8:39 AM
(Fecha)

Clerk, by Joshua Teixeira, Deputy
(Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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



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14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF STANISLAUS**

17 RACHEL LATIN, an individual, on behalf of
18 herself, and on behalf of all persons similarly
19 situated,

20 Plaintiffs,

21 vs.

22 ONEMAIN GENERAL SERVICES
23 CORPORATION., a Delaware Corporation;
24 and DOES 1 through 50, Inclusive;

25 DEFENDANTS.

Electronically Filed

6/8/2020 8:39 AM

Superior Court of California

County of Stanislaus

Clerk of the Court

By: Joshua Teixeira, Deputy

\$1,435 PAID

Case No. CV-20-002498

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802
9. ILLEGAL RESTRICTIONS ON DISCLOSURE

DEMAND FOR JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant ONEMAIN GENERAL SERVICES CORPORATION (“DEFENDANT”) is a
7 Delaware Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California, county of Stanislaus, City of Modesto, offers financial
9 services throughout the United States, including California.

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

19 3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
20 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
21 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
22 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
23 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
24 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
25 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

26 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
28

1 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
3 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
5 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
6 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
7 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
8 for each underpaid employee.

9 6. PLAINTIFF has been employed by DEFENDANTS at its Modesto branch, as a non-
10 exempt loan officer/specialist, paid on an hourly basis, entitled to certain non-discretionary incentive
11 compensation, bonuses, overtime pay and legally compliant meal and rest periods from June 2016 until
12 January 2020.

13 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
14 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
15 at any time between April 6, 2016 and a date determined by the Court (the "CLASS PERIOD"). The
16 amount in controversy for the aggregate claim of CALIFORNIA CLASS members is
17 under five million dollars (\$5,000,000.00).

18 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the CALIFORNIA
19 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
20 CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which (1) failed to provide
21 PLAINTIFF and the CALIFORNIA CLASS with legally complaint meal and rest periods or an
22 additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of California Labor
23 Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2)
24 failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter*
25 *alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate
26 itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

1 9. DEFENDANTS’ uniform policies and practices alleged herein were unlawful, unfair and
2 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
3 PLAINTIFF and the other members of the CALIFORNIA CLASS.

4 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
5 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
6 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS’s past
7 and current unlawful conduct, and all other appropriate legal and equitable relief.

8 **JURISDICTION AND VENUE**

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

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

18 **THE CONDUCT**

19 13. In violation of the applicable sections of the California Labor Code and the requirements
20 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
21 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
22 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
23 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
24 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
25 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
26 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
27 worked at each hourly rate. DEFENDANTS’ uniform policies and practices are intended to
28 purposefully avoid the accurate and full payment for all time worked as required by California law

1 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
2 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
3 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

5 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
6 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
7 the time during which an employee is subject to the control of an employer, including all the time the
8 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, as a result
9 of their overburdened work requirements, inadequate staffing and not being relieved of cordless
10 communication devices during their shifts, DEFENDANTS required PLAINTIFF and CALIFORNIA
11 CLASS members to work without paying them for all the time they were under DEFENDANTS'
12 control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what
13 was supposed to be PLAINTIFF's off-duty meal break. DEFENDANT required PLAINTIFF and
14 members of the CALIFORNIA CLASS to be available on their cell phones throughout their works
15 shifts and to remain at the ready to respond to work related issues and tasks communicated through the
16 phone. DEFENDANT did not have a policy or practice to relieve PLAINTIFF and the members of the
17 CALIFORNIA CLASS of their phones during what was supposed to be an off-duty meal period.
18 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should
19 have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA
20 CLASS members forfeited minimum wage and overtime wages by regularly working without their time
21 being accurately recorded and without compensation at the applicable minimum wage and overtime
22 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
23 CLASS members for all time worked is evidenced by DEFENDANTS' business records.

24 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
25 schedules, inadequate staffing and not being relieved of cordless communication devices, PLAINTIFF
26 and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute
27 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
28 CALIFORNIA CLASS members were required from time to time to perform work as ordered by

1 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
2 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS
3 members with a second off-duty meal period for some workdays in which these employees were
4 required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work
5 performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify for
6 limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other members of
7 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
8 accordance with DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to
9 maintain adequate staffing levels while increasing the production levels for each employee at the busy
10 airports they provided services for.

11 **B. Rest Period Violations**

12 16. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
13 Codes, an employer shall authorize and permit all employees to take a rest periods, which so far as
14 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
15 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
16 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee’s
17 regular rate of compensation for each workday that the rest period is not provided.

18 17. From time-to-time during the CLASS PERIOD, as a result of their overburdened work
19 requirements, inadequate staffing and not being relieved of cordless communication devices during their
20 shifts, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to
21 work in excess of four (4) hours without being provided duty-free ten (10) minute rest periods. Further,
22 these employees were denied their first duty-free rest periods of at least ten (10) minutes for some shifts
23 worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least
24 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
25 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
26 or more from time to time. DEFENDANT required PLAINTIFF and members of the CALIFORNIA
27 CLASS to carry cordless communication devices and to remain at the ready to respond to work related
28 issues and tasks communicated through the cordless communication device throughout their works

1 shifts. DEFENDANT did not have a policy or practice to relieve PLAINTIFF and the members of the
2 CALIFORNIA CLASS of their communication device during what was supposed to be an off-duty rest
3 period. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour
4 wages in lieu thereof.

5 **C. Overtime Regular Rate Violation**

6 18. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
7 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
8 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
9 forfeited wages due them for working overtime without compensation at the correct overtime rates.
10 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
11 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
12 DEFENDANTS' business records.

13 19. State law provides that employees must be paid overtime at one-and-one-half times their
14 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
15 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
16 performance.

17 20. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
18 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
19 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
20 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
21 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
22 set by DEFENDANTS. These flat-sum incentive payments are identified as "INS COMM" and "Group
23 Term Life" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
24 CALIFORNIA CLASS members.

25 21. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
26 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
27 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
28 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all

1 hours worked rather than just all non-overtime hours worked. Management and supervisors described
2 the incentive/bonus program to potential and new employees as part of the compensation package. As
3 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
4 members must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
5 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
6 by DEFENDANTS.

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

16 **D. Meal Period Premium Violations**

17 23. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
18 fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS
19 their missed meal and rest period premiums. As a result, PLAINTIFF and the other CALIFORNIA
20 CLASS members forfeited wages due them for their missed meal and rest periods without
21 compensation at the correct missed meal and rest period rates. DEFENDANTS’ uniform policy and
22 practice to not pay the CALIFORNIA CLASS members the correct rate for all missed meal and rest
23 period premium payment in accordance with applicable law is evidenced by DEFENDANTS’ business
24 records.

25 24. State law provides that employees must be paid premium hour of pay at the employee’s
26 “regular rate of compensation” for each workday that the meal or rest period is not provided.
27 PLAINTIFF and other CALIFORNIA CLASS members were compensated at an hourly rate plus a
28 non-discretionary incentive pay that was tied to specific elements of an employee’s performance. These

1 non-discretionary incentive payments are identified as “INS COMM” and “Group Term Life” in the
2 wage statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS
3 members.

4 25. The second component of PLAINTIFF’s and other CALIFORNIA CLASS members’
5 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and
6 other members of the CALIFORNIA CLASS incentive wages based on their performance for
7 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an hourly
8 basis with incentive compensation when the employees met the various performance goals set by
9 DEFENDANTS. However, when calculating the regular rate of pay in order to pay missed rest and
10 meal period premiums to PLAINTIFF and other CALIFORNIA CLASS members, DEFENDANTS
11 failed to include the incentive compensation as part of the employees’ “regular rate of compensation”
12 for purposes of calculating missed rest and meal period premiums. Management and supervisors
13 described the incentive program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
15 CLASS members must be included in the “regular rate of compensation.” The failure to do so has
16 resulted in a systematic underpayment of premium pay for missed meal and rest periods to PLAINTIFF
17 and other CALIFORNIA CLASS members by DEFENDANTS.

18 26. In violation of the applicable sections of the California Labor Code and the requirements
19 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
20 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
21 other members CALIFORNIA CLASS at the correct rate of pay for all missed meal and rest period
22 premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
23 payment of the correct missed meal and rest period premium compensation as required by California
24 law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors
25 who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

1 **E. Reporting Time Violations**

2 27. Frequently, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
3 Members to come into work on the weekends and engage in work for shifts lasting less than half of
4 their usual scheduled day's work. In such a circumstance of reporting for work, DEFENDANTS failed
5 to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8 § 11040. Subdivision
6 5(A) states: "Each workday an employee is required to report for work and does report, but is not put
7 to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall
8 be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
9 than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum
10 wage.." Cal. Code Regs., tit. 8 § 11040, subd. 5(A).

11 **F. Labor Code Section 2802 Violations**

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

22 29. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANTS to use their own personal cellular
24 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but were
25 not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their personal
26 cellular phones for DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA
27 CLASS Members were required by DEFENDANTS to use their personal cell phones to for work related
28 issues. As a result, in the course of their employment with DEFENDANTS the PLAINTIFF and other

1 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
2 were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the
3 benefit of DEFENDANTS.

4 **G. Wage Statement Violations**

5 30. California Labor Code Section 226 requires an employer to furnish its employees an
6 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
7 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
8 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
9 employee and only the last four digits of the employee's social security number or an employee
10 identification number other than a social security number, (8) the name and address of the legal entity
11 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 31. From time to time during the CLASS PERIOD, when PLAINTIFF and other
14 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
15 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
16 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
17 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
18 show, among other things, all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
20 missed meal and rest periods.

21 32. Additionally, from time-to-time during the CLASS PERIOD, DEFENDANTS issued
22 PLAINTIFF and members of the CALIFORNIA CLASS inaccurate wage statements that failed to
23 show, among other things, all applicable hourly rates in effect during the pay period and the
24 corresponding amount of time worked at each hourly rate and correct rates of pay. For instance, for
25 the pay period between June 3, 2019 and June 16, 2019, PLAINTIFF received remuneration from
26 DEFENDANTS described as "Retro Pay" in the gross amount of \$21.46. DEFENDANTS violated
27 California Labor Code Section 226 by failing to list the applicable hourly rate and the corresponding
28 number of hours worked at the applicable hourly rate for this line item of remuneration described as

1 “Retro Pay”. PLAINTIFF, and all those similarly situated members of the CALIFORNIA CLASS,
2 suffered damage as a result of DEFENDANTS’ aforementioned violation because he could not
3 promptly and easily determine from the wage statement alone the applicable hourly rate and the
4 corresponding number of hours worked at the applicable hourly rate for this line item of remuneration
5 described as “Retro Active”.

6 33. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
8 DEFENDANTS’ violations are knowing and intentional, were not isolated or due to an unintentional
9 payroll error due to clerical or inadvertent mistake.

10 **H. Unlawful Restrictions on Disclosure**

11 34. DEFENDANTS also adopted and enforced a policy and practice of compelling
12 employees to agree to a confidentiality agreement containing an unlawful non-disclosure provision as
13 a condition of their employment. The agreement bars PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS, from divulging certain confidential information, directly or
15 indirectly, without DEFENDANTS’ consent, except in the course of performance of authorized job
16 duties performed for DEFENDANTS and only as necessary to perform those job duties. The
17 confidential information is defined to include “salary and other information about employees.”

18 35. By requiring PLAINTIFF and other Members of the CALIFORNIA LABOR SUB-
19 CLASS to accept the CNDA as a condition of employment, DEFENDANTS violated numerous
20 California Labor Code provisions protecting workers’ rights to disclose certain information, including
21 but not limited to their wage information. The agreement acts as a continuing prohibition on the
22 disclosure of information from the date it is entered into and continues in perpetuity according to the
23 agreement.

24 36. To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation, and
25 the meal and rest break premiums still owed to him or any penalty wages owed to him under Cal. Lab.
26 Code § 203.

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CLASS ACTION ALLEGATIONS

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2 37. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
3 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-
4 exempt California employees (“CALIFORNIA CLASS”) between April 6, 2016 and a date determined
5 by the Court (“CLASS PERIOD”).

6 38. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
7 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
8 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
9 and rest period policies, failure to reimburse for expenses, failure to provide accurate itemized wage
10 statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s
11 fees, costs, and expenses.

12 39. The members of the class are so numerous that joinder of all class members is impractical.

13 40. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not
14 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
15 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
16 compensation for missed meal and rest period premiums, failing to reimburse for expenses, failure to
17 pay reporting time, failing to provide legally compliant meal and rest periods, failure to provide accurate
18 itemized wage statements accurate, and failure ensure they are paid at least minimum wage and
19 overtime, exist as to all members of the class and predominate over any questions affecting solely any
20 individual members of the class. Among the questions of law and fact common to the class are:

- 21 a. Whether DEFENDANTS maintained legally compliant meal period
- 22 policies and practices;
- 23 b. Whether DEFENDANTS maintained legally compliant rest period
- 24 policies and practices;
- 25 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
- 26 CALIFORNIA CLASS members accurate premium payments for missed
- 27 meal and rest periods;
- 28 d. Whether DEFENDANTS failed to pay PLAINTIFF and the

1 CALIFORNIA CLASS members accurate overtime wages.

2 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
3 CALIFORNIA CLASS members at least minimum wage for all hours
4 worked.

5 f. Whether DEFENDANTS failed to pay PLAINTIFF and the
6 CALIFORNIA CLASS members reporting time.

7 g. Whether DEFENDANTS failed to reimburse PLAINTIFF and the
8 CALIFORNIA CLASS members for business-related expenses.

9 h. Whether DEFENDANTS issued legally compliant wage statements;

10 i. Whether DEFENDANTS committed an act of unfair competition by
11 systematically failing to record and pay PLAINTIFF and the other members
12 of the CALIFORNIA CLASS for all time worked;

13 j. Whether DEFENDANTS committed an act of unfair competition by
14 systematically failing to record all meal and rest breaks missed by
15 PLAINTIFF and other CALIFORNIA CLASS members, even though
16 DEFENDANTS enjoyed the benefit of this work, required employees to
17 perform this work and permits or suffers to permit this work;

18 k. Whether DEFENDANTS committed an act of unfair competition in
19 violation of the UCL, by failing to provide the PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with the legally required meal and
21 rest periods; and,

22 41. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
23 of DEFENDANTS' conduct and actions alleged herein.

24 42. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
25 interests as the other members of the class.

26 43. PLAINTIFF will fairly and adequately represent and protect the interests of the
27 CALIFORNIA CLASS members.

28 44. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 45. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
3 of the other CALIFORNIA CLASS members.

4 46. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
6 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

7 47. The questions of law and fact common to the CALIFORNIA CLASS members
8 predominate over any questions affecting only individual members, including legal and factual issues
9 relating to liability and damages.

10 48. A class action is superior to other available methods for the fair and efficient adjudication
11 of this controversy because joinder of all class members is impractical. Moreover, since the damages
12 suffered by individual members of the class may be relatively small, the expense and burden of
13 individual litigation makes it practically impossible for the members of the class individually to redress
14 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of separate actions by individual
16 members of the CALIFORNIA CLASS will create the risk of:

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

20 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
21 which would as a practical matter be dispositive of the interests of the other members not
22 party to the adjudication or substantially impair or impeded their ability to protect their
23 interests.

24 49. Class treatment provides manageable judicial treatment calculated to bring an efficient
25 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
26 DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

7 51. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
8 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 53. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 “UCL”), by engaging and continuing to engage in business practices which violates California law,
25 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
26 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
27 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief
28 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct

1 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

18 57. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
19 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
20 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
21 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
22 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
23 Labor Code.

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

28 59. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA

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

3 60. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
4 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
5 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **For Failure to Pay Overtime Compensation**

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

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

11 67. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between
12 April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful
13 and intentional violations of the California Labor Code and the Industrial Welfare Commission
14 requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including,
15 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
16 forty (40) hours in any workweek.

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

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

22 70. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including
23 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198
24 further states that the employment of an employee for longer hours than those fixed by the Industrial
25 Welfare Commission is unlawful.

26 71. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
27 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
28 worked or were not accurately compensated for all overtime hours worked.

1 72. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
3 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
4 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
6 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
7 in any workweek.

8 73. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
9 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
10 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
11 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
12 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
13 applicable laws and regulations.

14 74. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
16 all overtime worked.

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

24 76. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
25 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
26 to pay all earned wages.

27 77. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
28 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum

1 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
2 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
3 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
4 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

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

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

23 81. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
24 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
25 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS members who have terminated their employment,
28 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals

1 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
2 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein
3 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **THIRD CAUSE OF ACTION**

6 **For Failure to Pay Minimum Wages**

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

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

11 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
12 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
13 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
14 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
15 LABOR CLASS PERIOD.

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

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

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

23 87. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
24 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
25 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
26 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
27 compensation. Further, as set forth herein, DEFENDANTS maintained a uniform policy that required
28 PLAINTIFF to report to a scheduled workday without paying her for at least four hours. Further, as set

1 forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny
2 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

3 88. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
5 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
6 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code §§ 226.7 & 512]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

22 96. 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 Complaint.

24 97. From time-to-time during the LABOR CLASS PERIOD, as a result of their overburdened
25 work requirements, inadequate staffing and not being relieved of cordless communication devices during
26 their shifts, DEFENDANTS failed to provide all the legally required off-duty meal breaks to
27 PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order
28 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS

1 members did not prevent these employees from being relieved of all of their duties for the legally
2 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS members were from time to time not fully relieved of duty by DEFENDANTS
4 for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the
5 CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work
6 is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to
7 provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some
8 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work.
9 As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal
10 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy
11 and practice.

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

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

20 **FIFTH CAUSE OF ACTION**

21 **For Failure to Provide Required Rest Periods**

22 **[Cal. Lab. Code §§ 226.7 & 512]**

23 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

26 101. From time-time during the LABOR CLASS PERIOD, as a result of their overburdened
27 work requirements, inadequate staffing and not being relived of cordless communication devices during
28 their shifts, PLAINTIFF and other CALIFORNIA CLASS members were from time to time required to

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

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code §§ 226 and 226.2]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 25 1. Gross wages earned;
- 26 2. Total hours worked by the employee, except for any employee
27 whose compensation is solely based on a salary and who is exempt from
28 payment of overtime under subdivision (a) of Section 515 or any applicable

1 order of the Industrial Welfare Commission;

2 3. The number of piece-rate units earned and any applicable piece rate
3 if the employee is paid on a piece-rate basis;

4 4. All deductions, provided that all deductions made on written orders
5 of the employee may be aggregated and shown as one item;

6 5. Net wages earned;

7 6. The inclusive dates of the period for which the employee is paid,

8 7. The name of the employee and his or her social security number,
9 except that by January 1, 2008, only the last four digits of his or her social
10 security number or an employee identification number other than a social
11 security number may be shown on the itemized statement,

12 8. The name and address of the legal entity that is the employer, and

13 9. All applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee.

15 106. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS also failed to
16 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
17 wage statements which failed to accurately show, among other things, (1) total number of hours
18 worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during
19 the pay period and the corresponding number of hours worked at each hourly rate by the employee in
20 violation of California Labor Code Section 226.

21 107. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
22 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
24 the overtime worked and the amount of employment taxes which were not properly paid to state and
25 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
26 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
27 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
28 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and

1 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
2 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
3 member of the CALIFORNIA CLASS herein.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

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

7 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

10 109. Cal. Lab. Code § 200 provides that:

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

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

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

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

25 112. There is no definite term in PLAINTIFF's or any CALIFORNIA CLASS members'
26 employment contract.

27 113. Cal. Lab. Code § 203 provides:

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

7 114. During the LABOR CLASS PERIOD, the employment of many CALIFORNIA CLASS
8 members terminated, and DEFENDANTS have not tendered payment of wages, to these employees
9 who missed meal and rest breaks and/or were underpaid overtime, or worked off the clock during what
10 was supposed to be off duty meal periods, as required by law.

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

16 **EIGHTH CAUSE OF ACTION**

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

18 **(Cal. Lab. Code §§ 2802)**

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

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

24 117. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

118. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for

1 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
2 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 members for expenses which included, but were not limited to, costs related to using their personal
4 cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and
5 other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
6 phones to respond to work related issues. DEFENDANT's uniform policy, practice and procedure was
7 to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses
8 resulting from using their personal cellular phones for DEFENDANT within the course and scope of
9 their employment for DEFENDANT. These expenses were necessary to complete their principal job
10 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
11 Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA
12 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
13 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
14 do under the laws and regulations of California.

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

19 **NINTH CAUSE OF ACTION**

20 **ILLEGAL RESTRICTIONS ON DISCLOSURE**

21 **(Cal. Lab. Code §1102.5)**

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

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

27 121. Labor Code § 1102.5(a) prohibits an employer from making, adopting, or enforcing any
28 rule, regulation, or policy preventing an employee from disclosing information to a government or law

1 enforcement agency, to a person with authority over the employee, or to another employee who has
2 authority to investigate, discover, or correct the violation or noncompliance, from providing
3 information to, or testifying before, any public body conducting an investigation, hearing, or inquiry,
4 if the employee has reasonable cause to believe that the information discloses a violation or state or
5 federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation,
6 regardless of whether disclosing the information is part of the employee's job duties.

7 122. Labor Code § 1102.5(f) provides: "In addition to other penalties, an employer that is a
8 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
9 (\$10,000) for each violation of this section."

10 123. DEFENDANTS required PLAINTIFF to sign a Confidentiality and Non- Disclosure
11 Agreement that prohibited him from disclosing any non-public information of commercial value. This
12 expressly includes, without limitation, his wages, the identities of his coworkers, training methods,
13 operation methods, office protocols and systems, and programs and systems. PLAINTIFF was subject
14 to that prohibition throughout his employment. Even after the termination of his employment with
15 DEFENDANT, PLAINTIFF remains subject to that prohibition.

16 124. The restrictions imposed by DEFENDANTS lack any exception to permit any of the
17 disclosures discussed in Labor Code § 1102.5(a). Simply, the Confidentiality and Non- Disclosure
18 Agreement prohibits employees from disclosing any non-public information of commercial value to
19 any entity regardless of whether employees believe that the information discloses a violation of state
20 or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation.

21 125. On information and belief, DEFENDANT's conduct has been substantially the same at
22 all relevant times throughout the state of California.

23 126. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to be
24 assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or herself
25 and other current or former employees pursuant to the procedures set forth in Labor Code § 2699.3.

26 127. PLAINTIFF seeks to recover damages from DEFENDANTS for their violations as
27 alleged herein pursuant to Labor Code § 1102.5 on behalf of himself and on behalf of the
28 CALIFORNIA LABOR SUB-CLASS.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
6 a class action pursuant to Cal. Code of Civ. Proc. § 382;

7 B) An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

9 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
10 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

11 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
12 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
13 members of the CALIFORNIA CLASS.

14 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
15 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
16 382;

17 1. Compensatory damages, according to proof at trial, including compensatory
18 damages for unpaid minimum wages and overtime compensation, and for unreimbursed business-
19 related expenses due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
20 applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

21 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
22 which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
23 CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
24 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

25 3. Meal and rest period compensation pursuant to California Labor Code Section
26 226.7, 512 and the applicable IWC Wage Order;

27 4. Damages pursuant to California Labor Code §1102.5;

28 5. Waiting time penalties pursuant to Labor Code Section 201, 202 and 203;

1 6. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
2 1197; and;

3 2. On all claims:

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

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

6 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
7 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

8
9 Dated: June 3, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, APC

10
11 By: 
12 Shani O. Zakay
13 Attorneys for PLAINTIFF

14 **DEMAND FOR JURY TRIAL**

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

16
17 Dated: June 3, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, APC

18
19 By: 
20 Shani O. Zakay
21 Attorneys for PLAINTIFF