

**SUMMONS
(CITACION JUDICIAL)**

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

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

GREG BUSBY d/b/a PET ENVY; and DOES 1-50, Inclusive,

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

CALEE JONES, 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):

Tulare Superior Court, Visalia Courthouse
221 S. Mooney Blvd.
Visalia, CA 93291

CASE NUMBER:
(Número del Caso):

VCU285601

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):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:
(Fecha) 01/15/2021

Stephanie Cameron

Clerk, by Stephanie Cameron, Deputy
(Secretaria) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):



01/15/2021

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ZAKAY LAW GROUP, APLC
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STEPHANIE CAMERON, CLERK
April Mathews, Deputy

Assigned to Judicial Officer

Bret Hillman

For All Purposes

Case Management Conference
05/19/2021 08:30 AM - Department 07

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE**

CALEE JONES, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

v.

GREG BUSBY d/b/a PET ENVY; and
DOES 1-50, Inclusive,

Defendants.

Case No: VCU285601

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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) FAILURE TO MAINTAIN ACCURATE AND COMPLETE EMPLOYMENT RECORDS IN VIOLATION OF CAL. LAB. CODE §§ 1174 AND 1174.5;
- 10) FAILURE TO PAY COMMISSION WAGES IN VIOLATION OF CAL. LAB. CODE §§ 200, *et seq*.

DEMAND FOR A JURY TRIAL

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant GREG BUSBY owns and operates pet grooming shops and at all
6 relevant times mentioned herein conducted and continues to conduct substantial and regular
7 business throughout California. Defendant GREG BUSBY operates the pet grooming shops
8 under the d/b/a “Pet Envy” (a.k.a. Pet Envy Grooming & Boutique”) (“DEFENDANT”).

9 2. DEFENDANT, owns and operates pet grooming shops throughout California,
10 including a location in Visalia, California where PLAINTIFF worked.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from January of
13 2020 to September of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid on an hourly basis, entitled to minimum wage and
15 overtime pay and to compliant meal and rest breaks.

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

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

1 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
2 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,
3 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have
4 been economically injured by DEFENDANT’S past and current unlawful conduct, and all other
5 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 sue these Defendants by such fictitious names pursuant
9 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
10 true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF
11 are informed and believes, and based upon that information and belief allege, that the Defendants
12 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some
13 manner for one or more of the events and happenings that proximately caused the injuries and
14 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. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
25 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
26 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
27 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
28 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,

1 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for
2 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform
3 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime
4 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's
5 business records.

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

10 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
11 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
12 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
13 performance for DEFENDANT. The non-discretionary incentive program provided all employees
14 paid on an hourly basis with incentive compensation when the employees met the various
15 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
16 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT
17 failed to include the incentive compensation as part of the employees' "regular rate of pay" for
18 purposes of calculating overtime pay. Management and supervisors described the incentive
19 program to potential and new employees as part of the compensation package. As a matter of law,
20 the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
21 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
22 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
23 Members by DEFENDANT.

24 11. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
28 of pay for all overtime worked. This uniform policy and practice of DEFENDANT is intended to

1 purposefully avoid the payment of the correct overtime compensation as required by California
2 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
3 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
4 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
5 be adjusted accordingly.

6 12. Specifically, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA
7 CLASS Members a percentage of fees paid by DEFENDANT’S customers to DEFENDANT for
8 each service provided by PLAINTIFF and CALIFORNIA CLASS Members. The percentage of
9 fees were required to be paid to PLAINTIFF and CALIFORNIA CLASS Members in the form of
10 commission wages. DEFENDANT failed to maintain a written compensation package detailing
11 the commission wages owed to PLAINTIFF and CALIFORNIA CLASS Members. Further,
12 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members all tips
13 that were paid by DEFENDANT’S customers to PLAINTIFF and CALIFORNIA CLASS
14 Members. For example, PLAINTIFF was paid \$22.76 year to date in “Paycheck Tips” on the pay
15 period ending September 3, 2020. Despite the commission wages and tips being part of
16 PLAINTIFF and CALIFORNIA CLASS Members’ compensation package, DEFENDANT
17 intentionally and knowingly failed to compensate PLAINTIFF and CALIFORNIA CLASS
18 Members all of the commission wages and tips owed to them, and instead intentionally and
19 knowingly withheld said wages for DEFENDANT’s own benefit.

20 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
24 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
25 the time they were under DEFENDANT’s control. Specifically, DEFENDANT required
26 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’S off-duty
27 meal break. PLAINTIFF was often interrupted by work assignments during her breaks. Indeed
28 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the

1 PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited minimum
2 wage and overtime compensation by working without their time being accurately recorded and
3 without compensation at the applicable minimum wage and overtime rates. DEFENDANT’S
4 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
5 for all time worked is evidenced by DEFENDANT’S business records.

6 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were also from time to time unable to take off duty meal breaks and were not
8 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS
9 Members were from time to time required to provide grooming services to approximately 120
10 dogs per day. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform
11 work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
12 an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
13 CLASS Members with a second off-duty meal period each workday in which these employees
14 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
15 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
16 compensation and in accordance with DEFENDANT’s strict corporate policy and practice

17 15. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
18 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
19 without being provided ten (10) minute rest periods. Further, these employees were denied their
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
21 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
22 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
23 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
24 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
25 required by DEFENDANT to work during their rest breaks. PLAINTIFF and other
26 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof. As
27 a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members
28

1 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S
2 managers.

3 16. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so.

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

18 18. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
19 worked during what was supposed to be their meal breaks or otherwise off the clock,
20 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
21 CLASS with complete and accurate wage statements which failed to show, among other things,
22 the correct time worked, including, work performed in excess of eight (8) hours in a workday
23 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
24 pay period, and the correct penalty payments or missed meal and rest periods in violation of
25 California Labor Code Sections 226 and 226.2.

26 19. California Labor Code Section 226 requires an employer to furnish its employees
27 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
28 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net

1 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
2 of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 20. Aside from the violations listed herein, DEFENDANT failed to issue to
7 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
8 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
10 226.

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

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

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

4 23. Further, DEFENDANT's timekeeping system was maintained as a handwritten
5 system that failed to accurately reflect the total amount of hours worked by PLAINTIFF and
6 CALIFORNIA CLASS Members. Specifically, from time to time, DEFENDANT required
7 PLAINTIFF and other CALIFORNIA CLASS Members to work off-the-clock, *inter alia*, during
8 what was supposed to be their off-duty meal periods, without maintaining an accurate record of
9 the actual time worked by its employees. As a result, DEFENDANT violated Cal. Lab. Code §§
10 1174 and 1174.5 by failing to maintain accurate employment records for PLAINTIFF and other
11 CALIFORNIA CLASS Members.

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

24 25. Specifically as to PLAINTIFF's pay, she was from time to time unable to take off
25 duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
26 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
28 provide PLAINTIFF with a second off-duty meal period each workday in which he was required

1 by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest
2 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
3 policy and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to
4 accurately display PLAINTIFF’s correct time worked and wages, as well as payments for missed
5 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
6 DEFENDANT has not fully paid PLAINTIFF the overtime compensation still owed to them or
7 any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for
8 PLAINTIFF individually does not exceed the sum or value of \$75,000.

9 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

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

28

1 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

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

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

20 32. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 33. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
25 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
26 policies, practices and procedures that failed to pay all wages due the CALIFORNIA
27 CLASS for all time worked;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 DEFENDANT uniformly failed to pay all wages due for all time worked by the
2 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

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

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

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of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 38. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
27 Eighth, Ninth, and Tenth causes of Action on behalf of a California sub-class, defined as all
28 members of the CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA

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

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

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

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

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

- 27 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for

1 missed meal and rest breaks in violation of the California Labor Code and
2 California regulations and the applicable California Wage Order;

3 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
5 thirty (30) minute meal breaks and rest periods;

6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
8 statements;

9 d. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
10 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
11 violation of the California Labor Code and California regulations and the
12 applicable California Wage Order;

13 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
14 compensation for time worked, including overtime worked, under the overtime
15 pay requirements of California law;

16 f. Whether DEFENDANT unlawfully failed to maintain accurate employment
17 records for the members of the CALIFORNIA LABOR SUB-CLASS;

18 g. Whether DEFENDANT unlawfully failed to pay members of the CALIFORNIA
19 LABOR SUB-CLASS all commission wages and tips owed;

20 h. Whether DEFENDANT has engaged in unfair competition by the above-listed
21 conduct;

22 i. The proper measure of damages and penalties owed to the members of the
23 CALIFORNIA LABOR SUB-CLASS; and

24 j. Whether DEFENDANT's conduct was willful.

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

27 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
28 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for

1 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code
2 § 1194;

3 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
4 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
5 the correct minimum wage pay for which DEFENDANT are liable pursuant to
6 Cal. Lab. Code §§ 1194 and 1197;

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

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

14 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
15 CALIFORNIA CLASS members with necessary expenses incurred in the
16 discharge of their job duties; and

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

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

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

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- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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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.

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

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

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

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- 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 has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA LABOR SUB-CLASS.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

10 48. DEFENDANT are a “person” as that term is defined under Cal. Bus. And Prof.
11 Code § 17021.

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

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

23 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 200, 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
27 1197, 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable
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1 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
2 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

3 51. 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 17203
7 of the California Business & Professions Code, including restitution of wages wrongfully
8 withheld.

9 52. 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, failed to accurately to record the time
12 worked, failed to pay commission wages and tips, and failed to reimburse for expenses due to a
13 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
14 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
15 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
16 Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

1 and economic harm unless DEFENDANT are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

27 68. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
3 pay.

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

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

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

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

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

28

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

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

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

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

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

25 82. 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 result
27 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,

1 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
2 in any workweek.

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

9 84. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
11 full compensation for all overtime worked.

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

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

23 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
26 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
28

1 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S
2 business records and witnessed by employees.

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

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

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

23 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S

1 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
2 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
3 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT’S conduct as
4 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

27 94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

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

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

14 101. Cal. Lab. Code § 2802 provides, in relevant part, that:

15
16 An employer shall indemnify his or her employee for all necessary expenditures or
17 losses incurred by the employee in direct consequence of the discharge of his or her duties,
18 or of his or her obedience to the directions of the employer, even though unlawful, unless
19 the employee, at the time of obeying the directions, believed them to be unlawful.

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

1 CLASS members for expenses resulting from using their personal cellular phones for
2 DEFENDANT within the course and scope of their employment for DEFENDANT. These
3 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
4 DEFENDANT’S conduct to assert any waiver of this expectation. Although these expenses were
5 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
7 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
8 laws and regulations of California.

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

13
14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

16 **(Cal. Lab. Code §§ 226 and 226.2)**

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

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

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

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

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

14 106. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
15 employees with an “accurate itemized” statement in writing showing:

- 16 a. The total hours of compensable rest and recovery periods, the rate of
- 17 compensation, and the gross wages paid for those periods during the
- 18 pay period; and
- 19 b. The total hours of other nonproductive time, the rate of
- 20 compensation, and the gross wages paid for that time during the pay
- 21 period.

22 107. When DEFENDANT did not accurately record PLAINTIFF’s and other
23 CALIFORNIA CLASS Members’ missed meal and rest breaks and wages, including overtime
24 wages, owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
26 other things, the correct overtime rate, missed meal and rest periods, commission wages, and tips
27 owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides
28 that every employer shall furnish each of his or her employees with an accurate itemized wage

1 statement in writing showing, among other things, gross wages earned and all applicable hourly
2 rates in effect during the pay period and the corresponding amount of time worked at each hourly
3 rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to
4 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
5 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
6 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §
7 226.

8 108. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code
9 § 226, causing injury and damages to the PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
11 expended calculating the correct rates for the overtime worked and the amount of employment
12 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
13 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
15 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
16 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
17 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
18 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN DUE**

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

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

24 109. 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
26 this Complaint.

27 110. Cal. Lab. Code § 200 provides that:
28

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

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

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

11
12 If an employee not having a written contract for a definite period quits his or her
13 employment, his or her wages shall become due and payable not later than 72 hours
14 thereafter, unless the employee has given 72 hours previous notice of his or her intention
15 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
16 Notwithstanding any other provision of law, an employee who quits without providing a
17 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
18 designates a mailing address. The date of the mailing shall constitute the date of payment
19 for purposes of the requirement to provide payment within 72 hours of the notice of
20 quitting.

21 113. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
22 CLASS Members’ employment contract.

23 114. Cal. Lab. Code § 203 provides:

24
25 If an employer willfully fails to pay, without abatement or reduction, in accordance
26 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
27 who quits, the wages of the employee shall continue as a penalty from the due date thereof
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1 at the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

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

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

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

14 **(Cal. Lab. Code §§ 1174 and 1174.5)**

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

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

20 118. Cal. Lab. Code § 1174(d) provides, in relevant part, that an employer shall:

21
22 Keep, at a central location in the state or at the plants or establishments at which
23 employees are employed, payroll records showing the hours worked daily by and the wages
24 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
25 employees employed at the respective plants or establishments. These records shall be kept
26 in accordance with rules established for this purpose by the commission, but in any case
27 shall be kept on file for not less than three years. An employer shall not prohibit an
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1 employee from maintaining a personal record of hours worked, or, if paid on a piece-rate
2 basis, piece-rate units earned.

3 119. When DEFENDANT, from time to time, required PLAINTIFF and other members
4 of the CALIFORNIA LABOR SUB-CLASS, to work off-the-clock, during what was supposed to
5 be their off-duty meal periods, DEFENDANT failed to accurately record the total actual time
6 worked by these employees. As a result, DEFENDANT violated Cal. Lab. Code §§ 1174 and
7 1174.5 by failing to maintain accurate employment records for PLAINTIFF and other
8 CALIFORNIA CLASS Members.

9 120. PLAINTIFF is informed and believes, and thereupon alleges, DEFENDANT
10 willfully failed to make and keep such records for PLAINTIFF and other members of the
11 CALIFORNIA LABOR SUB-CLASS.

12 121. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
13 required as an employer to maintain the following for each of its employees:

14 (1) Full name, home address, occupation and social security number.

15 (2) Birth date, if under 18 years, and designation as a minor.

16 (3) Time records showing when the employee begins and ends each work period.

17 Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal
18 periods during which operations cease and authorized rest periods need not be recorded.

19 (4) Total wages paid each payroll period, including value of board, lodging, or other
20 compensation actually furnished to the employee.

21 (5) Total hours worked in the payroll period and applicable rates of pay. This
22 information shall be made readily available to the employee upon reasonable request.

23 (6) When a piece rate or incentive plan is in operation, piece rates or an explanation
24 of the incentive plan formula shall be provided to employees. An accurate production
25 record shall be maintained by the employer.

26 IWC Wage Order, 7(A).

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28

1 122. DEFENDANT failed to comply with the foregoing requirements by failing to,
2 *inter alia*, accurately maintain time records of PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS.

4 123. Therefore, as provided by Cal Lab. Code §§ 1174 and 1174.5, on behalf of herself
5 and the members of the CALIFORNIA LABOR SUB-CLASS, PLAINTIFF may elect to recover
6 liquidated damages in the amount of five hundred dollars (\$500) for each violation, in a total
7 amount according to proof at the time of trial.

8 **TENTH CAUSE OF ACTION**

9 **FAILURE TO PAY COMMISSION WAGES**

10 **(Cal. Lab. Code §§ 200, *et seq.*)**

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

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

16 125. Cal. Lab. Code § 2751 provides, in relevant part, that:

17 Whenever an employer enters into a contract of employment with an employee for
18 services to be rendered within this state and the contemplated method of payment of the
19 employee involves commissions, the contract shall be in writing and shall set forth the
20 method by which the commissions shall be computed and paid.

21 126. DEFENDANT failed to maintain a written compensation package detailing the
22 commission wages owed to PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
23 CLASS.

24 127. Cal. Lab. Code § 200 provides, in relevant part, that:

25 “Wages” includes all amounts for labor performed by employees of every
26 description, whether the amount is fixed or ascertained by the standard of time, task, piece,
27 commission basis, or other method of calculation.

1 128. PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
2 earned commission wages within the meaning of Cal. Lab. Code § 200, *et seq.* DEFENDANT,
3 however, failed to pay PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
4 CLASS all commission wages owed to them.

5 129. Therefore, as provided by Cal Lab. Code §§ 200, *et seq.*, on behalf of herself and
6 the members of the CALIFORNIA LABOR SUB-CLASS, PLAINTIFF may elect to recover
7 unpaid commission wages, with interest, attorneys' fees, costs, and penalties, in an amount to be
8 determined a trial.

9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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expenses, and other compensation due to 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;

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


f. Damages in the amount of five hundred dollars (\$500) per member of the CALIFORNIA LABOR SUB-CLASS for failing to maintain accurate employment records.

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: January 15, 2021

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for Plaintiff


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DEMAND FOR A JURY TRIAL

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

DATED: January 15, 2021

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for Plaintiff