

**SUMMONS
(CITACION JUDICIAL)**

2021 FEB 11 11:19
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
BRANDON E. RILEY, CLERK
LISA VEGA
BY _____
DEPUTY

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

MGSACT, INC., a California Corporation (dba Stacie's Chalet); A AND A SENIOR LIVING MANAGEMENT LLC, a California Limited Liability Company; and DOES 1-50, Inclusive,

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

JACQUELINE KASPER, an individual; on behalf of herself and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court, County of San Joaquin
180 E Weber Avenue, Stockton California 95202

STK-CV-105-2021-1459

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Shani O. Zakay, Esq. (SBN: 277924)
ZAKAY LAW GROUP, APC, 3990 Old Town Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE: 2/11/21 BRANDON E. RILEY Clerk, by LISA VEGA, Deputy
(Fecha) (Secretario) (Adjunto)

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

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

VIA FAX

2021 FEB 24 PM 4:20

BRANDON E. RILEY, CLERK

BY LISA VEGA
DEPUTY

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619)255-9047
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4 **JCL LAW FIRM, APC**
5 Jean-Claude Lapuyade, Esq.
3990 Old Town Avenue, Suite C204
6 San Diego, CA 92110
7 Telephone: (619) 599-8292
Facsimile: (619) 599-8291

8 Attorneys for Plaintiffs

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

11 JACQUELINE KASPER, an individual; on
12 behalf of herself and on behalf of all persons
similarly situated,

13 Plaintiff,

14 v.

15 MGSACT, INC., a California Corporation
16 (dba Stacie's Chalet); A AND A SENIOR
LIVING MANAGEMENT LLC, a
17 California Limited Liability Company; and
DOES 1-50, Inclusive,

18
19 Defendants.

Case No:

STK-CV-10E-2021-1659

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;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

VIA FAX

1 Plaintiff JACQUELINE KASPER, (“PLAINTIFF”), on behalf of herself and all other similarly
2 situated current and former employees, allege on information and belief, except for their own
3 acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant MGSACT, INC (“Defendant MGSACT”) is a California Corporation
6 and at all relevant times mentioned herein conducted and continues to conduct substantial and
7 regular business throughout California. Defendant A AND A SENIOR LIVING
8 MANAGEMENT LLC (“Defendant A&A”) is a California Limited Liability Company and at all
9 relevant times mentioned herein conducted and continues to conduct substantial and regular
10 business throughout California. Defendant MGSACT and Defendant A&A are referred to herein
11 collectively as “DEFENDANTS.”

12 2. Defendant MGSACT and Defendant A&A were the joint employers of
13 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
14 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
15 herein and collectively referred to herein as “DEFENDANTS”.

16 3. DEFENDANTS, operate and manage senior communities throughout California.

17 4. PLAINTIFF JACQUELINE KASPER was employed by DEFENDANTS in
18 California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest
19 periods from May 2018 to June 2020. PLAINTIFF was at all times relevant mentioned herein
20 classified by DEFENDANTS as a non-exempt employee paid on an hourly basis.

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

28 6. PLAINTIFF bring this Class Action on behalf of herself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
2 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS'
3 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
4 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
7 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
8 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
9 all other appropriate legal and equitable relief.

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

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

THE CONDUCT

1
2 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically,
8 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
9 be PLAINTIFF’S off-duty meal break. PLAINTIFF was often interrupted by work assignments.
10 Indeed there were many days where PLAINTIFF did not even receive a partial lunch.
11 Furthermore, from time to time, DEFENDANTS required PLAINTIFF to work after-hours, after
12 clocking out, by responding to calls and inquiries. As a result, the PLAINTIFF and other
13 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
14 compensation by working without their time being accurately recorded and without compensation
15 at the applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and
16 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
17 is evidenced by DEFENDANTS’ business records.

18 10. DEFENDANTS consistently required PLAINTIFF and CALIFORNIA CLASS
19 Members to work off the clock without paying them for all the time they were under
20 DEFENDANTS’ control performing pre-shift and post-shift duties. Before PLAINTIFF and
21 CALIFORNIA CLASS Members’ “scheduled” start times, PLAINTIFF and CALIFORNIA
22 CLASS Members performed work for DEFENDANTS, but that work was rounded out and
23 PLAINTIFF and CALIFORNIA CLASS Members did not receive compensation for that time.

24 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
25 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
27 overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and
28 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and

1 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
2 applicable overtime compensation for overtime worked and to avoid paying these employees for
3 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
4 time to time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable overtime rates.

6 12. The mutability of the timekeeping system also allowed DEFENDANTS to alter
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
8 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
9 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
10 were not at all times provided an off-duty meal break. This practice is a direct result of
11 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
12 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

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

1 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS
2 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous
3 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
4 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

19 16. DEFENDANTS as a matter of corporate policy, practice and procedure,
20 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
21 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
28

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANTS to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
7 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
8 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
9 their personal cell phones to for work related issues. As a result, in the course of their employment
10 with DEFENDANTS the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use
12 of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

13 18. In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA
14 CLASS Members to engage in additional work, this sometimes resulted in a second reporting for
15 work in a single workday. In such a circumstance of a second reporting for work in a single
16 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
17 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work
18 a second time in any one workday and is furnished less than two (2) hours of work on the second
19 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay,
20 which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

21 19. By reason of this uniform conduct applicable to PLAINTIFF and all
22 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
25 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
26 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the
27 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation
28 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required

1 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
2 California Labor Code and regulations promulgated thereunder as herein alleged.

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE CALIFORNIA CLASS**

26 23. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
28 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all

1 individuals who are or previously were employed by Defendant MGSACT and/or Defendant
2 A&A in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any
3 time during the period beginning four (4) years prior to the filing of the original complaint and
4 ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The
5 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
6 million dollars (\$5,000,000.00).

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

10 25. DEFENDANTS, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 willfully, engaged in a practice whereby DEFENDANTS systematically failed to correctly
14 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of
15 the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of this work,
16 required employees to perform this work and permitted or suffered to permit this work.

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

26 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

28

1 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that failed to pay all wages due the
6 CALIFORNIA CLASS for all time worked;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
10 members;
- 11 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
12 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
13 company policies, practices and procedures that uniformly and systematically
14 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
15 CLASS for all time worked, including minimum wages owed and overtime wages
16 owed for work performed by these employees; and
- 17 d. Violating the UCL by unlawfully, unfairly and/or deceptively having in place
18 company policies, practices and procedures that failed to pay all reporting time
19 wages due to PLAINTIFF and the CALIFORNIA CLASS.
- 20 e. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
22 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
23 members with necessary expenses incurred in the discharge of their job duties.

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

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

- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
 - c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANTS’ deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS’ employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
 - d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.
30. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible

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- standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;
- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANTS’ policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual

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CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

31. 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

1 because the DEFENDANTS' employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

- 3 b. A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS because
5 in the context of employment litigation a substantial number of individual
6 CALIFORNIA CLASS Members will avoid asserting their rights individually out
7 of fear of retaliation or adverse impact on their employment;
- 8 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
9 to bring all members of the CALIFORNIA CLASS before the Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
11 obtain effective and economic legal redress unless the action is maintained as a
12 Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable relief
14 for the acts of unfair competition, statutory violations and other improprieties, and
15 in obtaining adequate compensation for the damages and injuries which
16 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 17 f. There is a community of interest in ensuring that the combined assets of
18 DEFENDANTS are sufficient to adequately compensate the members of the
19 CALIFORNIA CLASS for the injuries sustained;
- 20 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
21 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
22 with respect to the CALIFORNIA CLASS as a whole;
- 23 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
24 business records of DEFENDANTS; and
- 25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANTS as to the members of the
28 CALIFORNIA CLASS.

1 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
2 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
3 additional job titles of similarly situated employees when they have been identified.

4 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 8 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
9 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
10 missed meal and rest breaks in violation of the California Labor Code and
11 California regulations and the applicable California Wage Order;
- 12 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
14 thirty (30) minute meal breaks and rest periods;
- 15 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
17 statements;
- 18 d. Whether DEFENDANTS have engaged in unfair competition by the above-listed
19 conduct;
- 20 e. The proper measure of damages and penalties owed to the members of the
21 CALIFORNIA LABOR SUB-CLASS; and
- 22 f. Whether DEFENDANTS' conduct was willful.

23 38. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
24 under California law by:

- 25 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
26 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
27 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
28 § 1194;

- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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

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

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

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

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

27 i. Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA LABOR SUB-CLASS which would establish

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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 DEFENDANTS 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:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which

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would establish incompatible standards of conduct for the DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

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

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

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- 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 DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

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

28 46. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a systematic
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

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

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

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

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

26 52. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
3 compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

19 71. 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 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly
25 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
26 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
27 any workweek.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

15
16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

13
14 **SIXTH CAUSE OF ACTION**

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

16 **(Cal. Lab. Code §§ 2802)**

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

19 95. 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 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

27 97. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
28 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

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

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

20
21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
23 **(Cal. Lab. Code § 226)**

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
25 **against all Defendants)**

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

1 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
2 “accurate itemized” statement in writing showing:

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

21 101. When DEFENDANTS did not accurately record PLAINTIFF’S and other
22 CALIFORNIA CLASS Members’ missed meal and rest breaks, DEFENDANTS also failed to
23 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and
24 accurate wage statements which failed to show, among other things, missed meal and rest periods
25 and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal.
26 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
27 accurate itemized wage statement in writing showing, among other things, gross wages earned
28 and all applicable hourly rates in effect during the pay period and the corresponding amount of

1 time worked at each hourly rate. Aside from the violations listed above in this paragraph,
2 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
3 requirements under California Labor Code 226 *et seq.* As a result, from time to time
4 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
5 wage statements which violated Cal. Lab. Code § 226.

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

17
18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

26 104. Cal. Lab. Code § 200 provides that:

27 As used in this article:(a) "Wages" includes all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation. (b)

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

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

6 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

16 107. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-
17 CLASS Members' employment contract.

18 108. Cal. Lab. Code § 203 provides:

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

24 109. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
25 Members terminated and DEFENDANTS have not tendered payment of wages, to these
26 employees who worked off the clock and/or missed meal and rest breaks, as required by law.

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

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF against all Defendants)**

5 111. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 113. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this Representative Action on behalf of the State of California with respect to
19 themselves and all individuals who are or previously were employed by DEFENDANT MGSACT
20 and/or DEFENDANT A&A and classified as non-exempt employees in California during the time
21 period of December 17, 2019 until the present (the "AGGRIEVED EMPLOYEES").

22 114. On December 17, 2020, PLAINTIFF gave written notice by certified mail to the
23 Labor and Workforce Development Agency (the "Agency") and the employer of the
24 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
25 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
27 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
28

1 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 115. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to properly record and pay
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
6 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
7 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
8 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
9 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512,
10 558, 1194, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage Order(s), and thereby
11 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of
12 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
13 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
14 the other AGGRIEVED EMPLOYEES.

15
16 **PRAYER FOR RELIEF**

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

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

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

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

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

21 3. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

- 23 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
24 General Act of 2004

25 4. On all claims:

- 26 a. An award of interest, including prejudgment interest at the legal rate;
- 27 b. Such other and further relief as the Court deems just and equitable; and
- 28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,

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including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: February 22, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: February 22, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #33501

December 17, 2020

**Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency**

Online Filing

MGSACT, Inc
c/o Virtual Post Solutions, Inc.
Attention: Alejandro Sanz
340 S. Lemon Ave.
Walnut, CA 91789

A And A Senior Living Management, LLC
c/o BETTY DOMINICI
695 GLASGOW CIR
DANVILLE CA 94526

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JACQUELINE KASPER (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against MGSACT, Inc. and A And A Senior Living Management, LLC (“Defendants”). Plaintiff was employed by Defendants in California from May 2018 to June 2020 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control, including minimum wage and overtime worked. Defendants, however, unlawfully failed to record and accurately pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wages and overtime wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The proposed lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Jacqueline Kasper

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
3 Telephone: (619)255-9047
Facsimile: (858) 404-9203

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

8 Attorneys for Plaintiffs

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

11 JACQUELINE KASPER, an individual; on
12 behalf of herself and on behalf of all persons
similarly situated,

13 Plaintiff,

14 v.

15 MGSACT, INC., a California Corporation
16 (dba Stacie's Chalet); A AND A SENIOR
LIVING MANAGEMENT LLC, a
17 California Limited Liability Company; and
DOES 1-50, Inclusive,

18 Defendants.
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Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO 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;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff JACQUELINE KASPER, (“PLAINTIFF”), on behalf of herself and all other similarly
2 situated current and former employees, allege on information and belief, except for their own
3 acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant MGSACT, INC (“Defendant MGSACT”) is a California Corporation
6 and at all relevant times mentioned herein conducted and continues to conduct substantial and
7 regular business throughout California. Defendant A AND A SENIOR LIVING
8 MANAGEMENT LLC (“Defendant A&A”) is a California Limited Liability Company and at all
9 relevant times mentioned herein conducted and continues to conduct substantial and regular
10 business throughout California. Defendant MGSACT and Defendant A&A are referred to herein
11 collectively as “DEFENDANTS.”

12 2. Defendant MGSACT and Defendant A&A were the joint employers of
13 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
14 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
15 herein and collectively referred to herein as “DEFENDANTS”.

16 3. DEFENDANTS, operate and manage senior communities throughout California.

17 4. PLAINTIFF JACQUELINE KASPER was employed by DEFENDANTS in
18 California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest
19 periods from May 2018 to June 2020. PLAINTIFF was at all times relevant mentioned herein
20 classified by DEFENDANTS as a non-exempt employee paid on an hourly basis.

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

28 6. PLAINTIFF bring this Class Action on behalf of herself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
2 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS'
3 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
4 whereby DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
7 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
8 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
9 all other appropriate legal and equitable relief.

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

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

THE CONDUCT

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2 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an employer,
5 including all the time the employee is suffered or permitted to work. From time to time,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
7 paying them for all the time they were under DEFENDANTS’ control. Specifically,
8 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
9 be PLAINTIFF’S off-duty meal break. PLAINTIFF was often interrupted by work assignments.
10 Indeed there were many days where PLAINTIFF did not even receive a partial lunch.
11 Furthermore, from time to time, DEFENDANTS required PLAINTIFF to work after-hours, after
12 clocking out, by responding to calls and inquiries. As a result, the PLAINTIFF and other
13 CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime
14 compensation by working without their time being accurately recorded and without compensation
15 at the applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and
16 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
17 is evidenced by DEFENDANTS’ business records.

18 10. DEFENDANTS consistently required PLAINTIFF and CALIFORNIA CLASS
19 Members to work off the clock without paying them for all the time they were under
20 DEFENDANTS’ control performing pre-shift and post-shift duties. Before PLAINTIFF and
21 CALIFORNIA CLASS Members’ “scheduled” start times, PLAINTIFF and CALIFORNIA
22 CLASS Members performed work for DEFENDANTS, but that work was rounded out and
23 PLAINTIFF and CALIFORNIA CLASS Members did not receive compensation for that time.

24 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
25 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
27 overtime hours. As a result DEFENDANTS were able to and did in fact unlawfully, and
28 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and

1 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
2 applicable overtime compensation for overtime worked and to avoid paying these employees for
3 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
4 time to time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable overtime rates.

6 12. The mutability of the timekeeping system also allowed DEFENDANTS to alter
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
8 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
9 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
10 were not at all times provided an off-duty meal break. This practice is a direct result of
11 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
12 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

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

1 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS
2 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous
3 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
4 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

3 17. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANTS to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
7 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
8 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
9 their personal cell phones to for work related issues. As a result, in the course of their employment
10 with DEFENDANTS the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use
12 of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

13 18. In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA
14 CLASS Members to engage in additional work, this sometimes resulted in a second reporting for
15 work in a single workday. In such a circumstance of a second reporting for work in a single
16 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
17 Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work
18 a second time in any one workday and is furnished less than two (2) hours of work on the second
19 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay,
20 which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

21 19. By reason of this uniform conduct applicable to PLAINTIFF and all
22 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
25 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
26 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the
27 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation
28 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required

1 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
2 California Labor Code and regulations promulgated thereunder as herein alleged.

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE CALIFORNIA CLASS**

26 23. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
28 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all

1 individuals who are or previously were employed by Defendant MGSACT and/or Defendant
2 A&A in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any
3 time during the period beginning four (4) years prior to the filing of the original complaint and
4 ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The
5 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
6 million dollars (\$5,000,000.00).

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

10 25. DEFENDANTS, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 willfully, engaged in a practice whereby DEFENDANTS systematically failed to correctly
14 calculate and record all meal and rest breaks missed by PLAINTIFF and the other members of
15 the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of this work,
16 required employees to perform this work and permitted or suffered to permit this work.

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

26 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

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1 28. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
4 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that failed to pay all wages due the
6 CALIFORNIA CLASS for all time worked;
- 7 b. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
10 members;
- 11 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
12 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
13 company policies, practices and procedures that uniformly and systematically
14 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
15 CLASS for all time worked, including minimum wages owed and overtime wages
16 owed for work performed by these employees; and
- 17 d. Violating the UCL by unlawfully, unfairly and/or deceptively having in place
18 company policies, practices and procedures that failed to pay all reporting time
19 wages due to PLAINTIFF and the CALIFORNIA CLASS.
- 20 e. Committing an act of unfair competition in violation of the California Unfair
21 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
22 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
23 members with necessary expenses incurred in the discharge of their job duties.

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

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

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 2 raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 3 uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 5 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
- 6 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
- 7 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and
- 8 policy which failed to provide the legally required meal and rest periods to the
- 9 CALIFORNIA CLASS and thereby systematically underpaid compensation to
- 10 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
- 11 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
- 12 members of the CALIFORNIA CLASS were and are similarly or identically
- 13 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
- 14 misconduct engaged in by DEFENDANTS; and
- 15 d. The representative PLAINTIFF will fairly and adequately represent and protect
- 16 the interest of the CALIFORNIA CLASS, and has retained counsel who are
- 17 competent and experienced in Class Action litigation. There are no material
- 18 conflicts between the claims of the representative PLAINTIFF and the members
- 19 of the CALIFORNIA CLASS that would make class certification inappropriate.
- 20 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
- 21 CALIFORNIA CLASS Members.

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

- 24 a. Without class certification and determination of declaratory, injunctive, statutory
- 25 and other legal questions within the class format, prosecution of separate actions
- 26 by individual members of the CALIFORNIA CLASS will create the risk of:
 - 27 i. Inconsistent or varying adjudications with respect to individual members
 - 28 of the CALIFORNIA CLASS which would establish incompatible

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- standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;
- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANTS’ policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual

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CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

31. 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

1 because the DEFENDANTS' employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS.

- 3 b. A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS because
5 in the context of employment litigation a substantial number of individual
6 CALIFORNIA CLASS Members will avoid asserting their rights individually out
7 of fear of retaliation or adverse impact on their employment;
- 8 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
9 to bring all members of the CALIFORNIA CLASS before the Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
11 obtain effective and economic legal redress unless the action is maintained as a
12 Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable relief
14 for the acts of unfair competition, statutory violations and other improprieties, and
15 in obtaining adequate compensation for the damages and injuries which
16 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 17 f. There is a community of interest in ensuring that the combined assets of
18 DEFENDANTS are sufficient to adequately compensate the members of the
19 CALIFORNIA CLASS for the injuries sustained;
- 20 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
21 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
22 with respect to the CALIFORNIA CLASS as a whole;
- 23 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
24 business records of DEFENDANTS; and
- 25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANTS as to the members of the
28 CALIFORNIA CLASS.

1 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
2 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
3 additional job titles of similarly situated employees when they have been identified.

4 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 8 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
9 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
10 missed meal and rest breaks in violation of the California Labor Code and
11 California regulations and the applicable California Wage Order;
- 12 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
14 thirty (30) minute meal breaks and rest periods;
- 15 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
17 statements;
- 18 d. Whether DEFENDANTS have engaged in unfair competition by the above-listed
19 conduct;
- 20 e. The proper measure of damages and penalties owed to the members of the
21 CALIFORNIA LABOR SUB-CLASS; and
- 22 f. Whether DEFENDANTS' conduct was willful.

23 38. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
24 under California law by:

- 25 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
26 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
27 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
28 § 1194;

- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

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

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

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

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

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

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

27 i. Inconsistent or varying adjudications with respect to individual members
28 of the CALIFORNIA LABOR SUB-CLASS which would establish

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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 DEFENDANTS 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:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which

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would establish incompatible standards of conduct for the DEFENDANTS; 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 DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS 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.

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

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

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- 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 DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
 - f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
 - g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
 - h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
 - i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

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

28 46. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a systematic
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

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

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

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

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

26 52. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of

1 valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
3 compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

19 71. 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 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly
25 compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
26 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
27 any workweek.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

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

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

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

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

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16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

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

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

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

13
14 **SIXTH CAUSE OF ACTION**

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

16 **(Cal. Lab. Code §§ 2802)**

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

19 95. 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 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

27 97. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
28 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

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

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

20
21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
23 **(Cal. Lab. Code § 226)**

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
25 **against all Defendants)**

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

1 100. Cal. Labor Code § 226 provides that an employer must furnish employees with an
2 “accurate itemized” statement in writing showing:

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

21 101. When DEFENDANTS did not accurately record PLAINTIFF’S and other
22 CALIFORNIA CLASS Members’ missed meal and rest breaks, DEFENDANTS also failed to
23 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and
24 accurate wage statements which failed to show, among other things, missed meal and rest periods
25 and reporting time wages owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal.
26 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
27 accurate itemized wage statement in writing showing, among other things, gross wages earned
28 and all applicable hourly rates in effect during the pay period and the corresponding amount of

1 time worked at each hourly rate. Aside from the violations listed above in this paragraph,
2 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
3 requirements under California Labor Code 226 *et seq.* As a result, from time to time
4 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
5 wage statements which violated Cal. Lab. Code § 226.

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

17
18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

26 104. Cal. Lab. Code § 200 provides that:

27 As used in this article:(a) "Wages" includes all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation. (b)

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

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

6 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

13 107. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-
14 CLASS Members' employment contract.

15 108. Cal. Lab. Code § 203 provides:

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

19 109. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
20 Members terminated and DEFENDANTS have not tendered payment of wages, to these
21 employees who worked off the clock and/or missed meal and rest breaks, as required by law.

22 110. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
23 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
24 demand up to thirty days of pay as penalty for not paying all wages due at time of termination for
25 all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
26 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
27 costs as allowed by law.
28

1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF against all Defendants)**

5 111. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 113. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this Representative Action on behalf of the State of California with respect to
19 themselves and all individuals who are or previously were employed by DEFENDANT MGSACT
20 and/or DEFENDANT A&A and classified as non-exempt employees in California during the time
21 period of December __, 2019 until the present (the "AGGRIEVED EMPLOYEES").

22 114. On December __, 2020, PLAINTIFF gave written notice by certified mail to the
23 Labor and Workforce Development Agency (the "Agency") and the employer of the
24 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
25 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
27 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
28

1 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 115. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to properly record and pay
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
6 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
7 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
8 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
9 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512,
10 558, 1194, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage Order(s), and thereby
11 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of
12 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
13 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
14 the other AGGRIEVED EMPLOYEES.

15
16 **PRAYER FOR RELIEF**

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

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

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

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

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

21 3. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

- 23 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
24 General Act of 2004

25 4. On all claims:

- 26 a. An award of interest, including prejudgment interest at the legal rate;
- 27 b. Such other and further relief as the Court deems just and equitable; and
- 28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,

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including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff