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County of Los Angeles

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BY FAX

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

20 DENIS FLORES, an individual, on behalf of  
21 herself and on behalf of all persons similarly  
22 situated,

23 Plaintiff,

24 v.

25 PLASTIC EXPRESS, a Corporation; and  
26 DOES 1-50, Inclusive,

27 Defendants.

Case No: **BC 719071**

**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 PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and
- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203

**DEMAND FOR A JURY TRIAL**

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

5 **THE PARTIES**

6 1. PLAINTIFF is a California resident. PLAINTIFF at all relevant time periods  
7 mentioned herein worked and drove a truck in California for Defendant Plastic Express  
8 (“DEFENDANT”) from June of 2016 to April of 2018. As a Truck Driver, PLAINTIFF’s work  
9 required the performance of manual labor consisting of driving DEFENDANT’s trucks and  
10 transporting goods within the State of California. In performing these duties, PLAINTIFF did  
11 not utilize any independent discretion, judgment, or management decisions with respect to  
12 matters of significance. To the contrary, the work of PLAINTIFF as a Truck Driver was to  
13 provide on a daily basis the transportation of goods in accordance with the management  
14 decisions and business policies established by DEFENDANT. As a result, PLAINTIFF was  
15 entitled to be paid minimum wages, accurate wage statements, and meal and rest periods as  
16 required by California law. PLAINTIFF was paid by piece-rate only while he was employed as  
17 a Truck Driver for DEFENDANT. Importantly, he was not provided with minimum wages for  
18 his non-production work time. PLAINTIFF also did not receive paid rest breaks as required by  
19 California law and DEFENDANT failed to provide PLAINTIFF with the legally required meal  
20 periods. DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because  
21 DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis  
22 when delivering loads at the locations assigned by DEFENDANT. DEFENDANT however  
23 failed to pay minimum wages for compensable time worked. To date, DEFENDANT has not  
24 fully paid PLAINTIFF for all his wages still owed to him or any penalty wages owed to him  
25 under California Labor Code § 203. The amount in controversy for PLAINTIFF individually  
26 does not exceed the sum or value of \$75,000.

27 2. Defendant Plastic Express is a corporation that at all relevant times mentioned  
28 herein conducted and continues to conduct substantial and regular business throughout the State  
of California.

1           3.     Defendant Plastic Express was founded in 1970. The company's line of business  
2 includes providing local trucking with storage services. DEFENDANT is head quartered in Los  
3 Angeles County, California.

4           4.     PLAINTIFF brings this class action on behalf of himself and a California class,  
5 defined as all individuals who are or previously were employed by DEFENDANT as a Truck  
6 Driver employee (the "CALIFORNIA CLASS") at any time during the period beginning on the  
7 date four (4) years prior to the filing of this Complaint and ending on the date as determined by  
8 the Court (the "CALIFORNIA CLASS PERIOD").

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

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

25 //  
26 //  
27 //  
28 //

**THE CONDUCT**

1  
2           7.     The work required to be performed by PLAINTIFF and the other  
3 CALIFORNIA CLASS Members was manual labor consisting of driving DEFENDANT’s trucks  
4 and transporting goods within the State of California in accordance with DEFENDANT’s  
5 policies and practices. As a result of this work, PLAINTIFF and the other CALIFORNIA  
6 CLASS Members were involved in providing day to day routine transportation of goods as  
7 specified by DEFENDANT and this work was executed by the performance of manual labor  
8 within a defined skill set. PLAINTIFF and CALIFORNIA CLASS Members were not  
9 compensated through a monthly salary. PLAINTIFF and the other CALIFORNIA CLASS  
10 Members employed by DEFENDANT performed these manual tasks but were not paid the  
11 minimum wages to which they were entitled because of DEFENDANT’s systematic policies  
12 and practices of failing to correctly record all time worked, including, but not limited to, time  
13 spent during pre and post trip inspections of DEFENDANT’s trucks and time spent waiting for  
14 DEFENDANT’s loads to be ready for transport. DEFENDANT failed to correctly pay minimum  
15 wages to PLAINTIFF and the other CALIFORNIA CLASS Members in accordance with  
16 California law, and thereby systematically underpaid minimum compensation to PLAINTIFF  
17 and the other CALIFORNIA CLASS Members for their documented time worked.

18           8.     Individuals in these Truck Driver positions are and were employees who are  
19 entitled to minimum wage compensation and prompt payment of amounts that the employer  
20 owes an employee when the employee quits or is terminated, and other compensation and  
21 working conditions that are prescribed by law.

22           9.     Industrial Welfare Commission Wage Order 4-2001 provides: “Every employer  
23 shall pay to each employee, on the established payday for the period involved, not less than the  
24 applicable minimum wage for all hours worked in the payroll period, whether the remuneration  
25 is measured by time, piece, commission, or otherwise.” “Hours worked” is defined in the Wage  
26 Order as “the time during which an employee is subject to the control of an employer, and  
27 includes all the time the employee is suffered or permitted to work, whether or not required to  
28 do so.” Here, PLAINTIFF and CALIFORNIA CLASS Members are entitled to separate hourly

1 compensation for time spent performing other non-driving tasks, including but not limited, to  
2 pre and post trip inspections of DEFENDANT's vehicles, fueling DEFENDANT's vehicles and  
3 waiting for DEFENDANT's trucks to be ready to transport the product. DEFENDANT failed to  
4 correctly pay minimum wages to PLAINTIFF and the other CALIFORNIA CLASS Members in  
5 accordance with California law, and thereby systematically underpaid minimum wage  
6 compensation to PLAINTIFF and the other CALIFORNIA CLASS Members for their  
7 documented time worked. Specifically, DEFENDANT only paid PLAINTIFF and other Truck  
8 Drivers a flat amount per mile the Truck Drivers drove on behalf of DEFENDANT.  
9 PLAINTIFF and other Truck Drivers were not compensated for any of their time spent working  
10 other than the flat piece rate for each mile driven on DEFENDANT's behalf. DEFENDANT  
11 suffered and permitted PLAINTIFF and other CALIFORNIA CLASS Members to work and  
12 required these employees to remain under DEFENDANT's control without paying them, which  
13 resulted in PLAINTIFF and other CALIFORNIA CLASS Members earning less than the legal  
14 minimum wage in the State of California. PLAINTIFF and other CALIFORNIA CLASS  
15 Members performed a variety of work-related tasks for which they were not paid.

16         10. In addition, DEFENDANT failed to provide all the legally required unpaid, off-  
17 duty meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFF and  
18 the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor  
19 Code. DEFENDANT did not have a policy or practice which provided or recorded all the  
20 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest  
21 periods to the PLAINTIFF and the other CALIFORNIA CLASS Members. As a result,  
22 DEFENDANT's failure to provide the PLAINTIFF and the CALIFORNIA CLASS Members  
23 with all the legally required off-duty, unpaid meal periods and all the legally required off-duty,  
24 paid rest periods is evidenced by DEFENDANT's business records. DEFENDANT had a  
25 pattern and practice of establishing and scheduling routes to be completed in overly demanding  
26 time frames which resulted in DEFENDANT pressuring, discouraging, and impeding  
27 PLAINTIFF and other CALIFORNIA CLASS Members to complete their routes within the  
28 rigorous time frames and not take meal breaks. Because of DEFENDANT's demanding policies

1 on route completion times, PLAINTIFF and other CALIFORNIA CLASS Members felt that  
2 breaking route to exercise their rights to take meal and/or rest periods would sacrifice their jobs  
3 with DEFENDANT. As such, PLAINTIFF and other CALIFORNIA CLASS Members  
4 routinely worked through their meal periods.

5 11. From time to time, DEFENDANT also failed to provide the PLAINTIFF and the  
6 other members of the CALIFORNIA CLASS with complete and accurate wage statements  
7 which failed to show, among other things, the correct minimum wages for time worked,  
8 including, allocation of lawfully required, paid, and off-duty rest periods. Cal. Lab. Code § 226  
9 provides that every employer shall furnish each of his or her employees with an accurate  
10 itemized wage statement in writing showing, among other things, gross wages earned and all  
11 applicable hourly rates in effect during the pay period and the corresponding amount of time  
12 worked at each hourly rate. As a result, DEFENDANT provided the PLAINTIFF and the other  
13 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
14 226.

15 12. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA CLASS,  
16 seeks to recover all the compensation that DEFENDANT is required by law to provide, but  
17 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS Members. PLAINTIFF  
18 also seeks penalties and all other relief available to him and other CALIFORNIA CLASS  
19 Members under California law. Finally, PLAINTIFF seeks declaratory relief finding that the  
20 employment practices and policies of the DEFENDANT violated California law and injunctive  
21 relief to enjoin the DEFENDANT from continuing to engage in such employment practices.

22 13. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct  
23 and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the  
24 other members of the CALIFORNIA CLASS of money and career opportunities to which they  
25 were lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have  
26 adequate employment policies and maintaining adequate employment practices consistent with  
27 such policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged  
28 caused the money belonging to the PLAINTIFF and the other members of the CALIFORNIA

1 CLASS to be kept by DEFENDANT and thereby converted by DEFENDANT for  
2 DEFENDANT's own use.

3 14. DEFENDANT's practices violated and continue to violate the law, regardless of  
4 whether the employees' work is paid by commission, by salary, by piece rate, or by part  
5 commission, part piece rate, and/or part salary. As a result of this policy and practice,  
6 DEFENDANT failed to pay minimum wage pay in accordance with applicable law.

7 15. Accordingly, DEFENDANT committed acts of unfair competition in violation of  
8 the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* by engaging  
9 in company-wide policies that violated the California Labor Code and regulations promulgated  
10 thereunder as herein alleged.

11  
12 **THE CALIFORNIA CLASS**

13 16. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
15 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
16 individuals who are or previously were employed by DEFENDANT in California as a Truck  
17 Driver employee (the "CALIFORNIA CLASS") at any time during the period beginning four  
18 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court  
19 (the "CALIFORNIA CLASS PERIOD").

20 17. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
22 Requirements, and the applicable provisions of California law, intentionally, knowingly, and  
23 willfully, engaged in a practice whereby DEFENDANT used an unlawful, unfair and deceptive  
24 method to calculate minimum, and payment for missed meal periods and off-duty rest breaks  
25 owed to the PLAINTIFF and the other members of the CALIFORNIA CLASS.

26 18. All CALIFORNIA CLASS Members, including the PLAINTIFF, performed the  
27 same manual labor and were paid by DEFENDANT according to uniform and systematic  
28 company procedures, which, as alleged herein above, and failed to correctly pay minimum

1 wages. This business practice is uniformly applied to each and every member of the  
2 CALIFORNIA CLASS, and therefore, the propriety of these business practices can be  
3 adjudicated on a class-wide basis.

4 19. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
5 California law by:

- 6 a. Committing an act of unfair competition in violation of the California Unfair  
7 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,  
8 unfairly and deceptively having in place company policies, practices and  
9 procedures that uniformly denied PLAINTIFF and the members of the  
10 CALIFORNIA CLASS the correct minimum wages and otherwise violated  
11 applicable law;
- 12 b. Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§  
13 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in  
14 place company policies, practices and procedures that uniformly and  
15 systematically fail to provide and record all the legally required unpaid, off-duty  
16 meal periods and all the legally required paid, off-duty rest periods to the  
17 PLAINTIFF and the CALIFORNIA CLASS members.

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

- 20 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
21 joinder of all such persons is impracticable and the disposition of their claims as  
22 a class will benefit the parties and the Court;
- 23 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
24 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
25 uniformly to every member of the CALIFORNIA CLASS;
- 26 c. The claims of the representative PLAINTIFF are typical of the claims of each  
27 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
28 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on



1 an hourly basis who was subjected to the DEFENDANT's deceptive practice and  
2 policy which failed to provide the legally required meal and rest periods to the  
3 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
4 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
5 as a result of DEFENDANT's employment practices. PLAINTIFF and the  
6 members of the CALIFORNIA CLASS were and are similarly or identically  
7 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
8 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

1           b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
2 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
3 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
4 DEFENDANT uniformly failed to pay all wages due to members of the  
5 CALIFORNIA CLASS as required by law;

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

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

19           i. The interests of the members of the CALIFORNIA CLASS in  
20 individually controlling the prosecution or defense of separate actions;

21           ii. The extent and nature of any litigation concerning the controversy already  
22 commenced by or against members of the CALIFORNIA CLASS;

23           iii. The desirability or undesirability of concentrating the litigation of the  
24 claims in the particular forum;

25           iv. The difficulties likely to be encountered in the management of a Class  
26 Action; and,

27           v. The basis of DEFENDANT's conduct towards PLAINTIFF and the  
28 CALIFORNIA CLASS.

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

3           a. The questions of law and fact common to the CALIFORNIA CLASS  
4           predominate over any question affecting only individual CALIFORNIA CLASS  
5           Members because the DEFENDANT's employment practices were uniform and  
6           systematically applied with respect to the CALIFORNIA CLASS.

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

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

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

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

22           f. There is a community of interest in ensuring that the combined assets of  
23           DEFENDANT are sufficient to adequately compensate the members of the  
24           CALIFORNIA CLASS for the injuries sustained;

25           g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
26           CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
27           respect to the CALIFORNIA CLASS as a whole;

28

- 1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
- 2 business records of DEFENDANT; and
- 3 i. Class treatment provides manageable judicial treatment calculated to bring an
- 4 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 5 arising out of the conduct of DEFENDANT as to the members of the
- 6 CALIFORNIA CLASS.

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

13  
14 **THE CALIFORNIA LABOR SUB-CLASS**

15 24. PLAINTIFF further brings the Second, Third, Fourth Fifth, and Sixth causes of  
16 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
17 CLASS who were employed by DEFENDANT in California as Truck Driver employee (the  
18 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to  
19 the filing of the complaint and ending on the date as determined by the Court (the  
20 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.

21 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
22 LABOR SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS  
23 PERIOD should be adjusted accordingly.

24 26. DEFENDANT, as a matter of company policy, practice and procedure, and in  
25 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
26 requirements, and the applicable provisions of California law, intentionally, knowingly,  
27 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to  
28 correctly calculate compensation for the time worked by PLAINTIFF and the other members of

1 the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees,  
2 even though DEFENDANT enjoyed the benefit of this work, required employees to perform  
3 this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied  
4 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are  
5 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable  
6 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
7 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
8 accordingly.

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

- 11       a. Whether DEFENDANT unlawfully failed to pay minimum wage compensation  
12       to members of the CALIFORNIA LABOR SUBCLASS in violation of the  
13       California Labor Code and applicable regulations;
- 14       b. Whether DEFENDANT's policy and practice of failing to pay CALIFORNIA  
15       LABOR SUBCLASS Members wages, including minimum wages for all time  
16       worked, violates applicable provisions of California law;
- 17       c. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
18       compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
19       missed meal and rest breaks in violation of the California Labor Code and  
20       California regulations and the applicable California Wage Order;
- 21       d. Whether DEFENDANT unlawfully failed to keep and furnish CALIFORNIA  
22       LABOR SUBCLASS Members with accurate records of time worked;
- 23       e. Whether DEFENDANT failed to reimburse CALIFORNIA LABOR SUB-  
24       CLASS Members for business expenses incurred that were necessary to perform  
25       their job duties for DEFENDANT; and
- 26       f. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording time worked and thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197
- b. 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 paid rest breaks
- c. Violating Cal. Lab. Code § 226(a) by failing to provide the PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate by the employee; and,
- d. 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.

29. 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-

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

3 c. The claims of the representative PLAINTIFF are typical of the claims of each  
4 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
5 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
6 employee paid on an hourly basis who was subjected to the DEFENDANT's  
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 DEFENDANT's 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 DEFENDANT; 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  
15 counsel who are competent and experienced in Class Action litigation. There are  
16 no material conflicts between the claims of the representative PLAINTIFF and  
17 the members of the CALIFORNIALABOR 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 30. 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 DEFENDANT uniformly fails to pay all wages due. Including the correct wages 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 SUBCLASS in individually controlling the prosecution or defense of separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA LABOR SUBCLASS;
- iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- iv. The difficulties likely to be encountered in the management of a Class Action; and,



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v. The basis of DEFENDANT’s conduct towards PLAINTIFF and the CALIFORNIA LABOR SUBCLASS.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
- 2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
- 3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 5 ascertainable from the business records of DEFENDANT. The CALIFORNIA
- 6 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
- 7 employed by DEFENDANT in California during the CALIFORNIA LABOR
- 8 SUB-CLASS PERIOD; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
- 10 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 11 arising out of the conduct of DEFENDANT as to the members of the
- 12 CALIFORNIA LABOR SUB-CLASS.

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

19  
20 **JURISDICTION AND VENUE**

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

25 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
28 in this County and/or conducts substantial business in this County.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

5 35. 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 36. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
9 Code § 17021.

10 37. 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  
13 competition 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 defined in this chapter, or as may be necessary to restore to any person in interest any  
money or property, real or personal, which may have been acquired by means of such  
unfair competition. (Cal. Bus. & Prof. Code § 17203).

18 38. By the conduct alleged herein, DEFENDANT has engaged and continues to  
19 engage in a business practice which violates California law, including but not limited to, the  
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
21 including Sections 204, 226.2, 226.7, 512, 558, 1194, 1197, 1197.1, & 1198, for which this  
22 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §  
23 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
24 competition, including restitution of wages wrongfully withheld.

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

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
2 withheld.

3 40. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
4 fraudulent in that DEFENDANT's policy and practice failed to provide the required amount of  
5 compensation for missed meal and rest breaks, and failed to adequately compensate  
6 PLAINTIFF and CALIFORNIA CLASS Members for all non-production time, due to a  
7 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,  
8 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*  
9 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.  
10 & Prof. Code § 17203, including restitution of wages wrongfully withheld. The work schedule  
11 for the PLAINTIFF and other CALIFORNIA CLASS Members was set by DEFENDANT.

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

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

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

25 44. PLAINTIFF further demands on behalf of themselves and on behalf of each  
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period  
27 was not timely provided as required by law.  
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1           45. By and through the unlawful and unfair business practices described herein,  
2 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and  
3 the other members of the CALIFORNIA CLASS, and has deprived them of valuable rights and  
4 benefits guaranteed by law and contract, all to the detriment of these employees and to the  
5 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors  
6 who comply with the law.

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

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

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

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

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**SECOND CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES  
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)  
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all  
Defendants)**

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

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

52. 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.

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

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

55. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked, including time spent engaging in non-driving related tasks. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

56. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
2 CLASS in regards to minimum wage pay.

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

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

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

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

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

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1 Members for their rest periods as required by the applicable Wage Order and Labor Code.  
2 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to  
3 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,  
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
5 Members with all the legally required paid rest periods is evidenced by DEFENDANT's  
6 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
7 Members were also required to work in excess of four (4) hours without being provided ten (10)  
8 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
9 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
10 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
11 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
12 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
13 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
14 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
15 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

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

8 73. Cal. Labor Code § 226 provides that an employer must furnish employees with  
9 an “accurate itemized” statement in writing showing:

- 10 a. Gross wages earned,
- 11 b. (2) total hours worked by the employee, except for any employee whose  
12 compensation is solely based on a salary and who is exempt from payment  
13 of overtime under subdivision (a) of Section 515 or any applicable order  
14 of the Industrial Welfare Commission,
- 15 c. the number of piecerate units earned and any applicable piece rate if the  
16 employee is paid on a piece-rate basis,
- 17 d. all deductions, provided that all deductions made on written orders of the  
18 employee may be aggregated and shown as one item,
- 19 e. net wages earned,
- 20 f. the inclusive dates of the period for which the employee is paid,
- 21 g. the name of the employee and his or her social security number, except that by  
22 January 1, 2008, only the last four digits of his or her social security number of  
23 an employee identification number other than social security number may be  
24 shown on the itemized statement,
- 25 h. the name and address of the legal entity that is the employer, and
- 26 i. all applicable hourly rates in effect during the pay period and the corresponding  
27 number of hours worked at each hourly rate by the employee.
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1           74. From time to time, DEFENDANT violated Labor Code § 226(a), in that  
2 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages  
3 earned, and all applicable hourly rates in effect during the pay period and the corresponding  
4 amount of time worked at each hourly rate by the employee. DEFENDANT failed to provide  
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and  
6 accurate wage statements which failed to show, among other things, the correct wages for time  
7 worked, including, allocation of lawfully required, paid, and off-duty rest periods. Cal. Lab.  
8 Code § 226 provides that every employer shall furnish each of his or her employees with an  
9 accurate itemized wage statement in writing showing, among other things, gross wages earned  
10 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
11 time worked at each hourly rate. As a result, DEFENDANT provided the PLAINTIFF and the  
12 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
13 Code § 226.

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

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**SIXTH CAUSE OF ACTION**  
**FAILURE TO PAY WAGES WHEN DUE**  
**(Cal. Lab. Code § 203)**

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

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

7       77. Cal. Lab. Code § 200 provides that:

8             As used in this article:

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

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

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

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

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

      81. Cal. Lab. Code § 203 provides:

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



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

16 3. On all claims:

- 17 a. An award of interest, including prejudgment interest at the legal rate;
- 18 b. Such other and further relief as the Court deems just and equitable; and
- 19 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the  
20 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 1194,  
21 and/or § 2802.

22 DATED: August 21, 2018

23 **ZAKAY LAW GROUP, APLC**

24  
25 By:   
26 Shani O. Zakay  
27 Attorney for PLAINTIFF  
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**DEMAND FOR A JURY TRIAL**

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

DATED: August 21, 2018

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay  
Attorney for PLAINTIFF