

**SUMMONS  
(CITACION JUDICIAL)**

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

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**APR 19 2021**

**Sherri R. Carter, Executive Officer/Clerk of Court**

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

RPM JUICE, INC., a California Corporation; RPM FOODS, INC., a California Corporation; and DOES 1-50, Inclusive,

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

ISAIAH DAVIS, on behalf of himself and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Los Angeles Superior Court, Stanley Mosk Courthouse  
111 North Hill Street  
Los Angeles, CA 90012

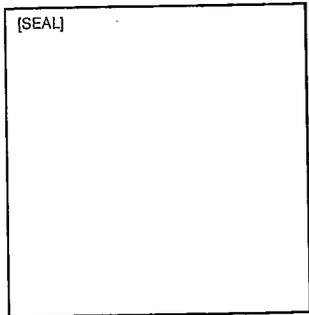
CASE NUMBER: **21ST CV14755**  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jean-Claude Lapuyade, Esq. (SBN 248676) T: (619) 599-28292; CL Law Firm, APC ; 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: **APR 19 2021** **Sherri R. Carter, Clerk** Clerk, by **STEVEN OREW**, Deputy (Adjunto) (Secretario)

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

**NOTICE TO THE PERSON SERVED: You are served**



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

VIA FAX

1 **ZAKAY LAW GROUP, APLC**  
Shami O. Zakay (State Bar #277924)  
2 Jackland K. Hom (State Bar #327243)  
3990 Old Town Avenue, Suite C204  
3 San Diego, CA 92110  
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Superior Court of California  
County of Los Angeles

**APR 19 2021**

**Sharri R. Carter, Executive Officer/Clerk of Court**

6 **JCL LAW FIRM, APC**  
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10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12  
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 ISAAIAH DAVIS, on behalf of himself and on  
15 behalf of all persons similarly situated,

Case No: **21ST CV14755**

16 Plaintiffs,

**CLASS ACTION COMPLAINT FOR:**

17 v.

18 RPM JUICE, INC., a California Corporation;  
19 RPM FOODS, INC., a California  
Corporation; and DOES 1-50, Inclusive,

20 Defendants.

- 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;

VIA FAX

- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE §§ 246, *et seq.*;
- 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

Plaintiff ISIAAH DAVIS, an individual, (“PLAINTIFF”), on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant RPM JUICE, INC. is a California corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant RPM FOODS, INC. is a California corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendants RPM JUICE, INC. and/or RPM FOODS, INC. were the joint employers of PLAINTIFF as evidenced by the contracts signed by Defendants RPM JUICE, INC. and/or RPM FOODS, INC. and PLAINTIFF, work performed by PLAINTIFF for Defendants RPM JUICE, INC. and/or RPM FOODS, INC., and Defendants RPM JUICE, INC. and/or RPM FOODS, INC. are therefore responsible as employers for the conduct alleged herein and referred to collectively herein as “DEFENDANT”.

4. DEFENDANT is a California Corporation that owns and operates Jamba Juice franchises throughout California, including in Los Angeles, California.

1           5.     PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
2 employee entitled to minimum wages, overtime pay and meal and rest periods from August 2019  
3 to October, 2020.

4           6.     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 in California  
6 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the  
7 period beginning four (4) years prior to the filing of the Complaint and ending on the date as  
8 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy  
9 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
10 (\$5,000,000.00).

11          7.     PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
13 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice  
14 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S  
15 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice  
16 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other  
17 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,  
19 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have  
20 been economically injured by DEFENDANT’S past and current unlawful conduct, and all other  
21 appropriate legal and equitable relief.

22          8.     The true names and capacities, whether individual, corporate, subsidiary,  
23 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently  
24 unknown to PLAINTIFF who therefore sue these DEFENDANT by such fictitious names  
25 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to  
26 allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
27 PLAINTIFF is informed and believe, and based upon that information and belief allege, that the  
28 DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, are responsible

1 in some manner for one or more of the events and happenings that proximately caused the injuries  
2 and damages hereinafter alleged

3 9. The agents, servants and/or employees of the DEFENDANT and each of them  
4 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority  
5 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the  
6 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.  
7 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and  
8 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
10 DEFENDANT's agents, servants and/or employees.

### 11 **THE CONDUCT**

12 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
13 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,  
14 meaning the time during which an employee is subject to the control of an employer, including  
15 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT  
16 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all  
17 the time they were under DEFENDANT'S control. Specifically, due to DEFENDANT'S  
18 unlawful policy of only compensating for overtime wages that were pre-approved by  
19 DEFENDANT, PLAINTIFF performed work before, during, and after their shifts, as well as  
20 during their meal breaks, spending time under DEFENDANT'S control for which they were not  
21 compensated. DEFENDANT's unlawful compensation policy resulted in PLAINTIFF and other  
22 CALIFORNIA CLASS Members being severely undercompensated for overtime compensation.  
23 As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage  
24 and overtime compensation by regularly working without their time being accurately recorded  
25 and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S  
26 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
27 for all time worked is evidenced by DEFENDANT's business records.

1           11.     As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
2 CLASS Members were also from time to time unable to take off duty meal breaks and were not  
3 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS  
4 Members were from time to time interrupted during their off-duty meal breaks to complete tasks  
5 for DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members were required to  
6 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without  
7 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF and  
8 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which  
9 these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF  
10 and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

27           13.     Under California law, every employer shall pay to each employee, on the  
28 established payday for the period involved, not less than the applicable minimum wage for all

1 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
2 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time  
3 during which an employee is subject to the control of an employer and includes all the time the  
4 employee is suffered or permitted to work, whether or not required to do so.” PLAINTIFF and  
5 other CALIFORNIA CLASS Members were from time to time required to perform work for  
6 DEFENANT before and after their scheduled shifts, as well as during their off-duty meal breaks.  
7 DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for  
8 any of the time spent under DEFENDANT’s control while working off-the-clock. As such,  
9 DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
10 applicable minimum wage for all hours worked in a payroll period.

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

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

28

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

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

14           18.     California Labor Code Section 246 mandates that paid sick time for non-employees  
15 shall be calculated in the same manner as the regular rate of pay for the workweek in which the  
16 non-exempt employee uses paid sick time, whether or not the employee actually works overtime  
17 in that workweek.

18           19.     California Labor Code Section 246, *et seq.* requires an employer to furnish its  
19 employees with written wage statements setting forth the amount of paid sick leave available.  
20 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF  
21 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount  
22 of paid sick leave available.

23           20.     DEFENDANT as a matter of corporate policy, practice and procedure,  
24 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF  
25 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
26 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging  
27 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers  
28 are required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
5 to be unlawful."

6 21. In the course of their employment, DEFENDANT required PLAINTIFF and other  
7 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance  
8 of their job duties as employees for DEFENDANT. As a result, in the course of their employment  
9 with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
10 unreimbursed business expenses and an unlawful deduction of wages which included, but were  
11 not limited to, costs related to the use of their personal cell phones all on behalf of and for the  
12 benefit of DEFENDANT.

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

25 23. Specifically, as to PLAINTIFF's pay, PLAINTIFF was from time to time unable  
26 to take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal  
27 periods. PLAINTIFF were required to perform work as ordered by DEFENDANT for more than  
28 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT

1 failed to provide PLAINTIFF with a second off-duty meal period each workday in which they  
2 were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on the premises, on-duty and  
4 on-call, for the rest break. PLAINTIFF therefore forfeited meal and rest breaks without additional  
5 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.  
6 Further, as a result of DEFENDANT’s unlawful policy to only pay overtime wages for pre-  
7 approved overtime hours, PLAINTIFF were not fully compensated for all time spent working for  
8 and under DEFENDANT’s control. Moreover, DEFENDANT also provided PLAINTIFF with a  
9 paystub that failed to accurately display PLAINTIFF’ correct time worked and wages, as well as  
10 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code  
11 § 226(a). Further, DEFENDANT from time to time failed to provide PLAINTIFF with a wage  
12 statement setting forth the amount of paid sick leave available to him, as required by Cal. Lab.  
13 Code § 246, *et seq.* To date, DEFENDANT has not fully paid PLAINTIFF the overtime  
14 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.  
15 The amount in controversy for PLAINTIFF individually do not exceed the sum or value of  
16 \$75,000.

17 **JURISDICTION AND VENUE**

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

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

27  
28 ///

**THE CALIFORNIA CLASS**

1  
2           26.     PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
5 individuals who are or previously were employed by DEFENDANT in California and classified  
6 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning  
7 four (4) years prior to the filing of the original complaint and ending on the date as determined by  
8 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate  
9 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1           30.    The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
2 CLASS Members is impracticable.

3           31.    DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
4 California law by:

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

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

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

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- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA 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 DEFENDANT’S 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 DEFENDANT’S 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 DEFENDANT; 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.

33. 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 DEFENDANT 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 seek declaratory relief holding that the DEFENDANT’S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
  
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to 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 DEFENDANT; and/or;
- 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

34. 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 DEFENDANT’S 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 DEFENDANT’S actions have inflicted upon the CALIFORNIA CLASS;
- 17 f. There is a community of interest in ensuring that the combined assets of  
18 DEFENDANT are sufficient to adequately compensate the members of the  
19 CALIFORNIA CLASS for the injuries sustained;
- 20 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
21 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
22 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 DEFENDANT; 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 DEFENDANT as to the members of the  
28 CALIFORNIA CLASS.



1 intentionally and uniformly subjected to DEFENDANT’S 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 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable

6 40. 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 DEFENDANT unlawfully failed to correctly pay compensation due to  
9 members of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest  
10 breaks in violation of the California Labor Code and California regulations and the  
11 applicable California Wage Order;
- 12 b. Whether DEFENDANT 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 DEFENDANT failed to provide PLAINTIFF and the other members of  
16 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
17 statements;
- 18 d. Whether DEFENDANT unlawfully failed to correctly pay overtime, sick and/or  
19 vacation compensation to members of the CALIFORNIA LABOR SUB-CLASS  
20 in violation of the California Labor Code and California regulations and the  
21 applicable California Wage Order;
- 22 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to  
23 compensation for time worked, including overtime worked, under the overtime  
24 pay requirements of California law;
- 25 f. Whether DEFENDANNT unlawfully failed to furnish written wage statements  
26 setting forth the amount of paid sick leave available to PLAINTIFF and other  
27 members of the CALIFORNIA LABOR SUB-CLASS;

- 1 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
- 2 conduct;
- 3 h. The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and
- 5 i. Whether DEFENDANT's conduct was willful.

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

- 8 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
- 9 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 10 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code
- 11 § 1194;
- 12 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 13 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 14 the correct minimum wage pay for which DEFENDANT are liable pursuant to
- 15 Cal. Lab. Code §§ 1194 and 1197;
- 16 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 17 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 18 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 19 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 20 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 21 statement in writing showing all accurate rates in effect during the pay period and
- 22 the corresponding amount of time worked at each overtime rate by the employee;
- 23 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
- 24 CALIFORNIA CLASS members with necessary expenses incurred in the
- 25 discharge of their job duties;
- 26 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
- 27 employee is discharged or quits from employment, the employer must pay the
- 28 employee all wages due without abatement, by failing to tender full payment

1 and/or restitution of wages owed or in the manner required by California law to  
2 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
3 their employment; and

- 4 g. Violating Cal. Lab. Code § 246, which provides that an employer must furnish its  
5 employees with written wage statements setting forth the amount of paid sick leave  
6 available to them.

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

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

- 13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
14 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
15 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
16 CLASS;

- 17 c. The claims of the representative PLAINTIFF are typical of the claims of each  
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
19 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt  
20 employee paid on an hourly basis who was subjected to the DEFENDANT'S  
21 practice and policy which failed to pay the correct amount of wages due to the  
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
23 a result of DEFENDANT'S employment practices. PLAINTIFF and the members  
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
25 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
26 misconduct engaged in by DEFENDANT; and

- 27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are no  
2 material conflicts between the claims of the representative PLAINTIFF and the  
3 members of the CALIFORNIA LABOR SUB-CLASS that would make class  
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
6 Members.

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

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

13 i. Inconsistent or varying adjudications with respect to individual members  
14 of the CALIFORNIA LABOR SUB-CLASS which would establish  
15 incompatible standards of conduct for the parties opposing the  
16 CALIFORNIA LABOR SUB-CLASS; or

17 ii. Adjudication with respect to individual members of the CALIFORNIA  
18 LABOR SUB-CLASS which would as a practical matter be dispositive of  
19 interests of the other members not party to the adjudication or substantially  
20 impair or impede their ability to protect their interests.

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
23 SUB-CLASS, making appropriate class-wide relief with respect to the  
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
25 failed to pay all wages due for all time worked by the members of the  
26 CALIFORNIA LABOR SUB-CLASS as required by law;

27 c. Common questions of law and fact predominate as to the members of the  
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting  
2 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class  
3 Action is superior to other available methods for the fair and efficient adjudication  
4 of the controversy, including consideration of:

5 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS  
6 in individually controlling the prosecution or defense of separate actions in  
7 that the substantial expense of individual actions will be avoided to recover  
8 the relatively small amount of economic losses sustained by the individual  
9 CALIFORNIA LABOR SUB-CLASS Members when compared to the  
10 substantial expense and burden of individual prosecution of this litigation;

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

13 1. Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS, which  
15 would establish incompatible standards of conduct for the  
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
19 be dispositive of the interests of the other members not parties to  
20 the adjudication or substantially impair or impede their ability to  
21 protect their interests;

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

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

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

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANT are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
10 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
11 PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANT as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANT)**

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

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

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

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

8 48. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,  
12 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant  
13 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
14 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

21 50. By the conduct alleged herein, DEFENDANT'S practices were deceptive and  
22 fraudulent in that DEFENDANT'S uniform policy and practice failed to pay PLAINTIFF, and  
23 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
24 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,  
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
28 wrongfully withheld.

1           51. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,  
2 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
4 DEFENDANT.

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

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

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

16           55. By and through the unlawful and unfair business practices described herein,  
17 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
18 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them of  
19 valuable rights and benefits guaranteed by law and contract, all to the detriment of these  
20 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete  
21 against competitors who comply with the law.

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

27           57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
28 and do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
3 business practices, including earned but unpaid wages.

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

8 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
9 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
10 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
11 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
12 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
13 and economic harm unless DEFENDANT are restrained from continuing to engage in these  
14 unlawful and unfair business practices.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
19 **DEFENDANT)**

20 60. 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 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
24 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code  
25 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately  
26 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

6           65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
7 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount  
8 of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was to  
9 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other  
10 members of the CALIFORNIA LABOR SUB-CLASS.

11           66. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
15 pay.

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

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

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

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

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

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

21           73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
23 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by  
24 the California Labor Code and/or other applicable statutes. To the extent minimum wage  
25 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
26 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§  
27 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under  
28 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR

1 SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful, intentional and  
2 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
3 are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

6 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

12 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
13 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code  
14 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately  
15 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the  
16 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the  
17 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work  
18 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

1           79.    DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
2 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount  
3 of overtime worked. As set forth herein, DEFENDANT’S uniform policy and practice was to  
4 unlawfully and intentionally deny timely payment of wages due for the overtime worked by  
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
6 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for all  
7 overtime worked.

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

14           81.    In committing these violations of the California Labor Code, DEFENDANT  
15 inaccurately calculated the amount of overtime worked and consequently underpaid the actual  
16 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
17 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
18 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
19 requirements and other applicable laws and regulations.

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

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

1 SUB-CLASS based on DEFENDANT’S violations of non-negotiable, non-waivable rights  
2 provided by the State of California.

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

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

13 86. By virtue of DEFENDANT’S 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 87. DEFENDANT knew or should have known that PLAINTIFF and the other  
19 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
20 worked. DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay  
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
24 overtime rate.

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

1 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for  
2 their legal rights, or the consequences to them, and with the despicable intent of depriving them  
3 of their property and legal rights, and otherwise causing them injury in order to increase company  
4 profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

21 90. 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 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
25 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
27 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
28 not prevent these employees from being relieved of all of their duties for the legally required off-



1 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided  
4 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF  
5 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper  
6 rest periods by DEFENDANT and DEFENDANT’S managers. When DEFENDANT provided  
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they  
8 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on  
9 DEFENDANT’S premises for those rest breaks.

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

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

18 **SIXTH CAUSE OF ACTION**

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

20 **(Cal. Lab. Code §§ 2802)**

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

23 98. 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 99. Cal. Lab. Code § 2802 provides, in relevant part, that:  
27  
28

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

6 100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
7 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
8 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
9 benefit. In the course of their employment, DEFENDANT required PLAINTIFF and other  
10 CALIFORNIA LABOR SUB-CLASS Members to use their personal cell phones as a result of  
11 and in furtherance of their job duties as employees for DEFENDANT. As a result, in the course  
12 of their employment with DEFENDANT the PLAINTIFF and other members of the  
13 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses and an unlawful  
14 deduction of wages which included, but were not limited to, costs related to the use of their  
15 personal cell phones. DEFENDANT'S uniform policy, practice and procedure was to cause  
16 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members to incur personal business  
17 expenses from using DEFENDANT'S work-issued vehicles by deducting these expenses from  
18 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members' wages. These expenses  
19 were necessary to complete their principal job duties. DEFENDANT is estopped by  
20 DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were  
21 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
22 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
23 LABOR SUB-CLASS members for these expenses as an employer is required to do under the  
24 laws and regulations of California.

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



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

- 3           a. The total hours of compensable rest and recovery periods, the rate of  
4           compensation, and the gross wages paid for those periods during the  
5           pay period; and  
6           b. The total hours of other nonproductive time, the rate of  
7           compensation, and the gross wages paid for that time during the pay  
8           period.

9           105. When DEFENDANT did not accurately record PLAINTIFF’ and other  
10 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also  
11 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete  
12 and accurate wage statements which failed to show, among other things, the correct overtime rate,  
13 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other  
14 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall  
15 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
16 among other things, gross wages earned and all applicable hourly rates in effect during the pay  
17 period and the corresponding amount of time worked at each hourly rate. Aside from the  
18 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized  
19 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
20 from time to time DEFENDANT provided PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

22           106. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code  
23 § 226, causing injury and damages to the PLAINTIFF and the other members of the  
24 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
25 expended calculating the correct rates for the overtime worked and the amount of employment  
26 taxes which were not properly paid to state and federal tax authorities. These damages are difficult  
27 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
28 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period

1 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a  
2 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the  
3 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and  
4 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

5 **EIGHTH CAUSE OF ACTION**  
6 **FAILURE TO PAY WAGES WHEN DUE**  
7 **(Cal. Lab. Code §§201, 202, 203)**

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

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

13 108. Cal. Lab. Code § 200 provides that:

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

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

24 110. Cal. Lab. Code § 202 provides, in relevant part, that:

25  
26 If an employee not having a written contract for a definite period quits his or her  
27 employment, his or her wages shall become due and payable not later than 72 hours  
28 thereafter, unless the employee has given 72 hours previous notice of his or her

1 intention to quit, in which case the employee is entitled to his or her wages at the  
2 time of quitting. Notwithstanding any other provision of law, an employee who  
3 quits without providing a 72-hour notice shall be entitled to receive payment by  
4 mail if he or she so requests and designates a mailing address. The date of the  
5 mailing shall constitute the date of payment for purposes of the requirement to  
6 provide payment within 72 hours of the notice of quitting.

7 111. There was no definite term in PLAINTIFF' or any CALIFORNIA LABOR SUB-  
8 CLASS Members' employment contract.

9 112. Cal. Lab. Code § 203 provides:

10  
11 If an employer willfully fails to pay, without abatement or reduction, in accordance  
12 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
13 discharged or who quits, the wages of the employee shall continue as a penalty  
14 from the due date thereof at the same rate until paid or until an action therefor is  
15 commenced; but the wages shall not continue for more than 30 days.

16 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
17 Members terminated and DEFENDANT has not tendered payment of wages, to these employees  
18 who missed meal and rest breaks, as required by law. To the extent DEFENDANT tendered partial  
19 payment of wages to terminated CALIFORNIA LABOR SUB-CLASS Members, that payment  
20 was late.

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

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1 **NINTH CAUSE OF ACTION**

2 **UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

3 **(Cal. Lab. Code § 246, et seq.)**

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

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

9 116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt  
10 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
11 which the employee uses paid sick time, whether or not the employee actually works overtime in  
12 that workweek.”

13 117. From time-to-time, during the PLAINTIFF and other members of the  
14 CALIFORNIA LABOR SUB-CLASS were compensated at an hourly rate plus either non-  
15 discretionary incentive pay. As a matter of law, the incentive compensation and/or piece-rate  
16 compensation received by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-  
17 CLASS must be included in the “regular rate of pay.”

18 118. From time-to-time during the CLASS PERIOD, in those pay periods where  
19 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly  
20 compensation and either non-discretionary incentive compensation, and took paid sick time,  
21 DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating  
22 paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

23 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary  
24 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick  
25 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the  
26 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA  
27 LABOR SUB-CLASS therefore request recovery of all unpaid wages, including sick pay wages,  
28 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties

1 against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable  
2 statutes. To the extent overtime compensation is determined to be owed to other members of the  
3 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT's  
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
6 on behalf of other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT'S  
7 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and  
8 other members of the CALIFORNIA LABOR SUB-CLASS are entitled to seek and recover  
9 statutory costs.

10 120. Cal. Lab. Code § 246(i) provides that:

11 An employer shall provide an employee with written notice that sets forth the  
12 amount of paid sick leave available, or paid time off leave an employer provides  
13 in lieu of sick leave, for use on either the employee's itemized wage statement  
14 described in Section 226 or in a separate writing provided on the designated pay  
15 date with the employee's payment of wages. If an employer provides unlimited  
16 paid sick leave or unlimited paid time off to an employee, the employer may satisfy  
17 this section by indicating on the notice or the employee's itemized wage statement  
18 "unlimited."

19 121. From time to time, DEFENDANT failed to furnish PLAINTIFF and other  
20 members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth  
21 the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*  
22 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR-SUBCLASS are  
23 entitled to seek and recover statutory costs.

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

3 126. The policies, acts and practices heretofore described were and are an unlawful  
4 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and  
5 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage  
6 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)  
7 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in  
8 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not  
9 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,  
10 246, 510, 512, 558, 1174(d),1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804,  
11 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a  
12 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the  
13 Labor Code Private Attorney General Act of 2004 as the representative of the State of California  
14 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and  
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

- 1           2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 2           a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
- 3           Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
- 4           class action pursuant to Cal. Code of Civ. Proc. § 382;
- 5           b. Compensatory damages, according to proof at trial, including compensatory
- 6           damages for minimum wages, overtime wages, unreimbursed expenses, and other
- 7           compensation due to PLAINTIFF and the other members of the CALIFORNIA
- 8           LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
- 9           CLASS PERIOD plus interest thereon at the statutory rate;
- 10          c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 11          the applicable IWC Wage Order;
- 12          d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 13          which a violation occurs and one hundred dollars (\$100) per member of the
- 14          CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 15          period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 16          an award of costs for violation of Cal. Lab. Code § 226;
- 17          e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
- 18          CLASS as a penalty from the due date thereof at the same rate until paid or until an
- 19          action therefore is commenced, in accordance with Cal. Lab. Code § 203; and
- 20          f. The statutory damages and an award of costs for violation of Cal. Lab. Code § 246.
- 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: April 15, 2021

**JCL LAW FIRM, APC**

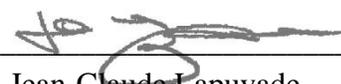
By:   
Jean-Claude Lapuyade  
Attorney for Plaintiffs

**DEMAND FOR A JURY TRIAL**

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

DATED: April 15, 2021

**JCL LAW FIRM, APC**

By:   
Jean-Claude Lapuyade  
Attorney for Plaintiffs

# **EXHIBIT 1**



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February 8, 2021

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
PAGA@dir.ca.gov  
***Via Online Submission***

**RPM FOODS, INC.**  
c/o Reza Moalej  
4335 Van Nuys Blvd., 102  
Sherman Oaks, CA 91403  
***Via Certified Mail with Return Receipt***  
***No. 7020 2450 0001 4373 5836***

**RPM JUICE, INC.**  
c/o Reza Moalej  
4335 Van Nuys Blvd., 102  
Sherman Oaks, CA 91403  
***Via Certified Mail with Return Receipt***  
***No. 7020 2450 0001 4373 5829***

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents ISIAH DAVIS (“Plaintiff”) and other aggrieved employees in a class action against RPM JUICE, INC. and RPM FOODS, INC. (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants from August 2019 to October 2020 in California. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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,  
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 3990 Old Town Avenue, Suite C204  
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3 Telephone: (619)255-9047  
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4 **JCL LAW FIRM, APC**  
5 Jean-Claude Lapuyade (State Bar #248676)  
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 LOS ANGELES**

11 ISAIAH DAVIS, on behalf of himself and on  
12 behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 RPM JUICE, INC., a California Corporation;  
RPM FOODS, INC., a California  
16 Corporation; and DOES 1-50, Inclusive,

17 Defendants.

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 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;

**DEMAND FOR A JURY TRIAL**

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant RPM JUICE, INC. is a California corporation and at all relevant times  
6 mentioned herein conducted and continues to conduct substantial and regular business throughout  
7 California.

8 2. Defendant RPM FOODS, INC. is a California corporation and at all relevant times  
9 mentioned herein conducted and continues to conduct substantial and regular business throughout  
10 California.

11 3. Defendants RPM JUICE, INC. and/or RPM FOODS, INC. were the joint  
12 employers of PLAINTIFF as evidenced by the contracts signed by Defendants RPM JUICE, INC.  
13 and/or RPM FOODS, INC. and PLAINTIFF, work performed by PLAINTIFF for Defendants  
14 RPM JUICE, INC. and/or RPM FOODS, INC., and Defendants RPM JUICE, INC. and/or RPM  
15 FOODS, INC. are therefore responsible as employers for the conduct alleged herein and referred  
16 to collectively herein as “DEFENDANT”.

17 4. DEFENDANT is a California Corporation that owns and operates Jamba Juice  
18 franchises throughout California, including in Los Angeles, California.

19 5. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
20 employee entitled to minimum wages, overtime pay and meal and rest periods from August 2019  
21 to October, 2020.

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

1           7.     PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice  
4 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S  
5 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice  
6 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the  
8 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,  
9 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have  
10 been economically injured by DEFENDANT’S past and current unlawful conduct, and all other  
11 appropriate legal and equitable relief.

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

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

**THE CONDUCT**

1  
2           10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
3 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,  
4 meaning the time during which an employee is subject to the control of an employer, including  
5 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT  
6 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all  
7 the time they were under DEFENDANT’S control. Specifically, due to DEFENDANT’S  
8 unlawful policy of only compensating for overtime wages that were pre-approved by  
9 DEFENDANT, PLAINTIFF performed work before, during, and after their shifts, as well as  
10 during their meal breaks, spending time under DEFENDANT’S control for which they were not  
11 compensated. DEFENDANT’s unlawful compensation policy resulted in PLAINTIFF and other  
12 CALIFORNIA CLASS Members being severely undercompensated for overtime compensation.  
13 As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage  
14 and overtime compensation by regularly working without their time being accurately recorded  
15 and without compensation at the applicable minimum wage and overtime rates. DEFENDANT’S  
16 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
17 for all time worked is evidenced by DEFENDANT’s business records.

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

1           12.     During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and  
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
3 without being provided ten (10) minute rest periods. Further, these employees were denied their  
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
6 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
7 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
8 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and  
9 required by DEFENDANT to work during their rest breaks. When they did have an opportunity  
10 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to  
11 remain on premises, and therefore on duty and on call, and subject to DEFENDANT's control in  
12 accordance with DEFENDANT's policy. PLAINTIFF and other CALIFORNIA CLASS  
13 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous  
14 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically  
15 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

16           13.     Under California law, every employer shall pay to each employee, on the  
17 established payday for the period involved, not less than the applicable minimum wage for all  
18 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
19 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
20 during which an employee is subject to the control of an employer and includes all the time the  
21 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and  
22 other CALIFORNIA CLASS Members were from time to time required to perform work for  
23 DEFENANT before and after their scheduled shifts, as well as during their off-duty meal breaks.  
24 DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for  
25 any of the time spent under DEFENDANT's control while working off-the-clock. As such,  
26 DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
27 applicable minimum wage for all hours worked in a payroll period.

28

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

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

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

26           17. Aside from the violations listed herein, DEFENDANT, from time to time, failed  
27 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California  
28 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and

1 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
2 Code § 226.

3 18. California Labor Code Section 246 mandates that paid sick time for non-employees  
4 shall be calculated in the same manner as the regular rate of pay for the workweek in which the  
5 non-exempt employee uses paid sick time, whether or not the employee actually works overtime  
6 in that workweek.

7 19. California Labor Code Section 246, *et seq.* requires an employer to furnish its  
8 employees with written wage statements setting forth the amount of paid sick leave available.  
9 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF  
10 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount  
11 of paid sick leave available.

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

23 21. In the course of their employment, DEFENDANT required PLAINTIFF and other  
24 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance  
25 of their job duties as employees for DEFENDANT. As a result, in the course of their employment  
26 with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
27 unreimbursed business expenses and an unlawful deduction of wages which included, but were  
28

1 not limited to, costs related to the use of their personal cell phones all on behalf of and for the  
2 benefit of DEFENDANT.

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

15 23. Specifically, as to PLAINTIFF’s pay, PLAINTIFF was from time to time unable  
16 to take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal  
17 periods. PLAINTIFF were required to perform work as ordered by DEFENDANT for more than  
18 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT  
19 failed to provide PLAINTIFF with a second off-duty meal period each workday in which they  
20 were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on the premises, on-duty and  
22 on-call, for the rest break. PLAINTIFF therefore forfeited meal and rest breaks without additional  
23 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.  
24 Further, as a result of DEFENDANT’s unlawful policy to only pay overtime wages for pre-  
25 approved overtime hours, PLAINTIFF were not fully compensated for all time spent working for  
26 and under DEFENDANT’S control. Moreover, DEFENDANT also provided PLAINTIFF with a  
27 paystub that failed to accurately display PLAINTIFF’ correct time worked and wages, as well as  
28 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code

1 § 226(a). Further, DEFENDANT from time to time failed to provide PLAINTIFF with a wage  
2 statement setting forth the amount of paid sick leave available to him, as required by Cal. Lab.  
3 Code § 246, *et seq.* To date, DEFENDANT has not fully paid PLAINTIFF the overtime  
4 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.  
5 The amount in controversy for PLAINTIFF individually do not exceed the sum or value of  
6 \$75,000.

### 7 **JURISDICTION AND VENUE**

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

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

### 17 **THE CALIFORNIA CLASS**

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

26 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
28 accordingly.

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

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

17           30.     The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
18 CLASS Members is impracticable.

19           31.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
20 California law by:

- 21           a.     Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
22                 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
23                 policies, practices and procedures that failed to pay all wages due the  
24                 CALIFORNIA CLASS for all time worked;
- 25           b.     Committing an act of unfair competition in violation of the California Unfair  
26                 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
27                 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
28                 members;

- 1 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
3 company policies, practices and procedures that uniformly and systematically  
4 failed to record and pay PLAINTIFF and other members of the CALIFORNIA  
5 CLASS for all time worked, including minimum wages owed and overtime wages  
6 owed for work performed by these employees; and
- 7 d. Committing an act of unfair competition in violation of the California Unfair  
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.  
9 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS  
10 members with necessary expenses incurred in the discharge of their job duties.

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

- 13 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
14 joinder of all such persons is impracticable and the disposition of their claims as a  
15 class will benefit the parties and the Court;
- 16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
17 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
18 uniformly to every member of the CALIFORNIA CLASS;
- 19 c. The claims of the representative PLAINTIFF are typical of the claims of each  
20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
21 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an  
22 hourly basis who was subjected to the DEFENDANT’S deceptive practice and  
23 policy which failed to provide the legally required meal and rest periods to the  
24 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
25 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
26 as a result of DEFENDANT’S employment practices. PLAINTIFF and the  
27 members of the CALIFORNIA CLASS were and are similarly or identically  
28

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
2 misconduct engaged in by DEFENDANT; and

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

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

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

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

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

23 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
24 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
26 DEFENDANT uniformly failed to pay all wages due for all time worked by the  
27 members of the CALIFORNIA CLASS as required by law;

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- i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT’S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
  
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
  - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
    - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
    - 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication

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or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

25 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

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breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- d. Whether DEFENDANT unlawfully failed to correctly pay overtime, sick and/or vacation compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANT unlawfully failed to furnish written wage statements setting forth the amount of paid sick leave available to PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS;
- g. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- h. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- i. Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

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

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

23 g. Violating Cal. Lab. Code § 246, which provides that an employer must furnish its  
24 employees with written wage statements setting forth the amount of paid sick leave  
25 available to them.

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

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

43. 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:

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

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- 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 would establish incompatible standards of conduct for the DEFENDANT; and/or,
    - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
  - iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
  - iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
3 PERIOD; and

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

8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL BUSINESS PRACTICES**

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

11 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANT)**

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

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

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

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

28 48. By the conduct alleged herein, DEFENDANT has engaged and continues to  
engage in a business practice which violates California law, including but not limited to, the  
applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,

1 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant  
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
3 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

81. In committing these violations of the California Labor Code, DEFENDANT  
inaccurately calculated the amount of overtime worked and consequently underpaid the actual

1 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
4 requirements and other applicable laws and regulations.

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

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

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

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

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











- 1 h. The name and address of the legal entity that is the employer; and
- 2 i. All applicable hourly rates in effect during the pay period and the corresponding
- 3 number of hours worked at each hourly rate by the employee.

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

- 6 a. The total hours of compensable rest and recovery periods, the rate of
- 7 compensation, and the gross wages paid for those periods during the
- 8 pay period; and
- 9 b. The total hours of other nonproductive time, the rate of
- 10 compensation, and the gross wages paid for that time during the pay
- 11 period.

12 105. When DEFENDANT did not accurately record PLAINTIFF’ and other  
13 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also  
14 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete  
15 and accurate wage statements which failed to show, among other things, the correct overtime rate,  
16 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other  
17 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall  
18 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
19 among other things, gross wages earned and all applicable hourly rates in effect during the pay  
20 period and the corresponding amount of time worked at each hourly rate. Aside from the  
21 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized  
22 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
23 from time to time DEFENDANT provided PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

25 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code  
26 § 226, causing injury and damages to the PLAINTIFF and the other members of the  
27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
28 expended calculating the correct rates for the overtime worked and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are difficult  
2 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period  
4 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a  
5 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the  
6 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and  
7 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

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

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

20 107. 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.

23 108. Cal. Lab. Code § 200 provides that:

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

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

4           110. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14           111. There was no definite term in PLAINTIFF’ or any CALIFORNIA LABOR SUB-  
15 CLASS Members’ employment contract.

16           112. Cal. Lab. Code § 203 provides:

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

22           113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
23 Members terminated and DEFENDANT has not tendered payment of wages, to these employees  
24 who missed meal and rest breaks, as required by law. To the extent DEFENDANT tendered partial  
25 payment of wages to terminated CALIFORNIA LABOR SUB-CLASS Members, that payment  
26 was late.

27           114. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF  
demands 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 **UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

3 **(Cal. Lab. Code § 246, et seq.)**

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

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

9 116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt  
10 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
11 which the employee uses paid sick time, whether or not the employee actually works overtime in  
12 that workweek.”

13 117. From time-to-time, during the PLAINTIFF and other members of the  
14 CALIFORNIA LABOR SUB-CLASS were compensated at an hourly rate plus either non-  
15 discretionary incentive pay. As a matter of law, the incentive compensation and/or piece-rate  
16 compensation received by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-  
17 CLASS must be included in the “regular rate of pay.”

18 118. From time-to-time during the CLASS PERIOD, in those pay periods where  
19 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly  
20 compensation and either non-discretionary incentive compensation, and took paid sick time,  
21 DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating  
22 paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

23 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary  
24 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick  
25 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the  
26 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA  
27 LABOR SUB-CLASS therefore request recovery of all unpaid wages, including sick pay wages,  
28 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties  
against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable

1 statutes. To the extent overtime compensation is determined to be owed to other members of the  
2 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT's  
3 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
4 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
5 on behalf of other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT'S  
6 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and  
7 other members of the CALIFORNIA LABOR SUB-CLASS are entitled to seek and recover  
8 statutory costs.

9 120. Cal. Lab. Code § 246(i) provides that:

10 An employer shall provide an employee with written notice that sets forth the  
11 amount of paid sick leave available, or paid time off leave an employer provides  
12 in lieu of sick leave, for use on either the employee's itemized wage statement  
13 described in Section 226 or in a separate writing provided on the designated pay  
14 date with the employee's payment of wages. If an employer provides unlimited  
15 paid sick leave or unlimited paid time off to an employee, the employer may satisfy  
16 this section by indicating on the notice or the employee's itemized wage statement  
17 "unlimited."

18 121. From time to time, DEFENDANT failed to furnish PLAINTIFF and other  
19 members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth  
20 the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*  
21 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR-SUBCLASS are  
22 entitled to seek and recover statutory costs.

### 23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and  
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
28 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining  
DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS; and

3 d. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund  
4 for restitution of the sums incidental to DEFENDANT’S violations due to  
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

7 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and  
8 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a  
9 class action pursuant to Cal. Code of Civ. Proc. § 382;

10 b. Compensatory damages, according to proof at trial, including compensatory  
11 damages for minimum wages, overtime wages, unreimbursed expenses, and other  
12 compensation due to PLAINTIFF and the other members of the CALIFORNIA  
13 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
14 CLASS PERIOD plus interest thereon at the statutory rate;

15 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
16 the applicable IWC Wage Order;

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

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

25 f. The statutory damages and an award of costs for violation of Cal. Lab. Code § 246.

26 3. On all claims:

27 a. An award of interest, including prejudgment interest at the legal rate;

28 b. Such other and further relief as the Court deems just and equitable; and

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c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: \_\_\_\_\_, 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: \_\_\_\_\_, 2021

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_

Shani O. Zakay  
Attorney for Plaintiffs

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 RPM Juice, Inc.  
 c/o Reza Moalej  
 4335 Van Nuys Blvd, 102  
 Sherman Oaks, CA 91403



9590 9402 5466 9249 9968 58

2. Article Number (Transfer from service label)  
 7020 2450 0001 4373 5829

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X BS RIS C-19  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery  
 John 2/12/21

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                         | <input type="checkbox"/> Registered Mail Restrictive Delivery       |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

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9590 9402 5466 9249 9968 41

2. Article Number (Transfer from service label)  
 7020 2450 0001 4373 5836

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X BS RIS C-19  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery  
 John 2/12/21

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                         | <input type="checkbox"/> Registered Mail Restrictive Delivery       |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

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