

**SUMMONS
(CITACION JUDICIAL)**

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

FILED

AUG 22 2019

AK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

SINCLAIR TELEVISION OF CALIFORNIA, LLC, a California Limited Liability Company;
CALIFORNIA BROADCASTING, INC., a California Corporation; and Does 1 through 50,
Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SABRINA IVON, an individual, on behalf of herself, and on behalf of all persons similarly
situated,

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Humbolt Superior Court

825 Fifth Street
Eureka, CA 95501

CASE NUMBER
(Número del Caso):

08190699

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. 3990 Old Town Avenue, Suite C204 San Diego, California 92110 Telephone: 619-892-7095

DATE:

AUG 22 2019

(Fecha)

KIM M. BARTLESON

Clerk, by
(Secretario)

ANGEL R

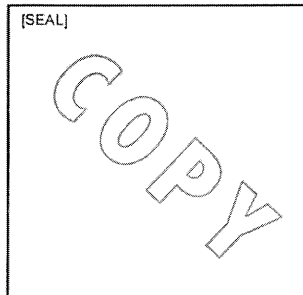
Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

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



FAX FILE

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

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF HUMBOLDT

SABRINA IVON, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

SINCLAIR TELEVISION OF
CALIFORNIA, LLC, a California Limited
Liability Company; CALIFORNIA
BROADCASTING, INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. DR190699

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1; and,
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

DEMAND FOR A JURY TRIAL

FILED
'AUG 22 2019 AR
SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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

5 **THE PARTIES**

6 1. Defendant Sinclair Television of California, LLC is a California limited liability
7 company and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout the State of California.

9 2. Defendant California Broadcasting, Inc. is a California corporation and at all
10 relevant times mentioned herein conducted and continues to conduct substantial and regular
11 business throughout the State of California.

12 3. Defendants Sinclair Television of California, LLC and California Broadcasting,
13 Inc. are the joint employers of PLAINTIFF as evidenced by paycheck and by the company
14 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
15 for the conduct alleged herein, and are therefore collectively referred to herein as
16 DEFENDANT.

17 4. DEFENDANT is a television broadcasting company. DEFENDANT owns and
18 operates, programs or provides sales services to television stations and has affiliations with the
19 major networks. In addition, DEFENDANT owns multicast networks, four radio stations and
20 a cable network.

21 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
22 defined as all individuals who are or previously were employed by Defendant Sinclair
23 Television of California, LLC and/or California Broadcasting, Inc. in California and paid on a
24 draw vs. commission compensation scheme (the “CALIFORNIA CLASS”) at any time during
25 the period beginning four (4) years prior to the filing of this Complaint and ending on the date
26 as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
27 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
28 dollars (\$5,000,000.00).

1 6. PLAINTIFF brings this Class Action on behalf of herself 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 missed meal breaks and
5 unpaid rest periods. DEFENDANT's uniform policy and practice alleged herein is an unlawful,
6 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain
7 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and
8 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
9 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
10 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
11 current unlawful conduct, and all other appropriate legal and equitable relief.

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

21 8. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
26 all Defendants 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 Defendants' agents, servants and/or employees.

1 **THE CONDUCT**

2 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
3 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
4 Members as required by the applicable Wage Order and Labor Code. The nature of the work
5 performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS does not prevent these
6 employees from being relieved of all of their duties for the legally required off-duty meal
7 periods. DEFENDANT’s meal period policies and practices are unlawful because PLAINTIFF
8 and other CALIFORNIA CLASS Members are far too over-booked with servicing
9 DEFENDANT’s clients. As a result of their rigorous work schedules, PLAINTIFF and other
10 CALIFORNIA CLASS Members are from time to time not fully relieved of duty by
11 DEFENDANT for their meal periods. Additionally, DEFENDANT’s failure to provide
12 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior
13 to their fifth (5th) hour of work from time to time is evidenced by DEFENDANT’s business
14 records. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS
15 Members from time to time with a second off-duty meal period for some workdays in which
16 these employees are required by DEFENDANT to work ten (10) hours of work. As a result,
17 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
18 without additional compensation and in accordance with DEFENDANT’s strict corporate policy
19 and practice.

20 10. In addition, because of DEFENDANT’s compensation pay plan described herein,
21 DEFENDANT fails to compensate PLAINTIFF and other CALIFORNIA CLASS Members for
22 their rest periods as required by the applicable Wage Order and Labor Code. Specifically,
23 DEFENDANT fails to advise PLAINTIFF and the CALIFORNIA CLASS Members of their
24 right to take separately and hourly paid duty-free ten (10) minute rest periods when working on
25 a commission and/or commission draw basis and fails to separately compensate PLAINTIFF
26 and the other CALIFORNIA CLASS Members for the non-productive time associated with their
27 rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017)
28 (adopting *Bluford* and its progeny in the context of commission based compensation plans and

1 holding “that such compensation plans must separately account and pay for rest periods to
2 comply with California law.”); *see also Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864,
3 872 (2013), *reh’g denied* (June 18, 2013), *review denied* (Aug. 28, 2013) (“rest periods must
4 be separately compensated in a piece-rate system. Rest periods are considered hours worked
5 and must be compensated.”) (*citing Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323 (2005)).
6 DEFENDANT does not have a policy or practice which pays for off-duty rest periods to
7 PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT’s
8 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally
9 required paid rest periods is evidenced by DEFENDANT’s business records. From time to time
10 PLAINTIFF and other CALIFORNIA CLASS Members are also required to work in excess of
11 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
12 are denied their first rest periods of at least ten (10) minutes for some shifts worked of at least
13 two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some
14 shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of
15 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
16 PLAINTIFF and other CALIFORNIA CLASS Members are also not provided with one hour
17 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members are periodically denied their proper rest periods by
19 DEFENDANT and DEFENDANT’s managers.

20 11. Under California law, every employer shall pay to each employee, on the
21 established payday for the period involved, not less than the applicable minimum wage for all
22 hours worked in the payroll period, whether the remuneration is measured by time, piece,
23 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
24 during which an employee is subject to the control of an employer, and includes all the time the
25 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF
26 and CALIFORNIA CLASS Members are entitled to separate hourly compensation for time
27 spent performing all non-sales related tasks directed by DEFENDANT during their work shifts

28 12. From time to time, when DEFENDANT does not accurately record PLAINTIFF’s

1 and other CALIFORNIA CLASS Members' missed meal and rest breaks and also fails to pay
2 the proper minimum wage, the wage statements issued to PLAINTIFF and other CALIFORNIA
3 CLASS Members by DEFENDANT violated California law, and in particular, Labor Code
4 Section 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT fails
5 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
6 California Labor Code 226 *et seq.*

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

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

28 15. For an employee to be exempt as a bona fide "outside salesperson," all the

1 following criteria must be met and DEFENDANT has the burden of proving that:

- 2 (a) The employee's primary duty must be making sales as defined to include any
3 sale, exchange, contract to sell, consignment sale, shipment for sale, or other
4 disposition; or
- 5 (b) The employee must obtain orders or contracts for services or for the use of
6 facilities for which a consideration will be paid by the client or customer; and,
- 7 (c) The employee must customarily and regularly spend more than half the work time
8 away from the employer's place of business engaged in sales-related activity;
9 and,
- 10 (d) The employee must be primarily engaged in duties which meet the test of
11 exemption.

12 16. PLAINTIFF and No member of the CALIFORNIA CLASS was or is an outside
13 salesperson because they all fail to meet the requirements of being an "outside salesperson"
14 within the meaning of the applicable Wage Order. Specifically, PLAINTIFF and
15 CALIFORNIA CLASS Members who work for DEFENDANT, spent the vast majority of their
16 time working at DEFENDANT's office, these employees were not going door to door soliciting
17 customers with in person meetings. Employees who performed these tasks in DEFENDANT's
18 office do not qualify for the outside sales exemption.

19 17. Specifically as to PLAINTIFF, DEFENDANT from time to time fails to provide
20 all the legally required off-duty meal breaks to her and paid rest periods to her as required by
21 the applicable Wage Order and Labor Code. DEFENDANT fails to compensate PLAINTIFF
22 for her missed meal and rest breaks. The nature of the work performed by PLAINTIFF does not
23 prevent her from being relieved of all of her duties for the legally required off-duty meal
24 periods. Further, DEFENDANT fail to provide PLAINTIFF with a second off-duty meal period
25 each workday in which PLAINTIFF is required by DEFENDANT to work ten (10) hours of
26 work. As a result, DEFENDANT'S failure to provide PLAINTIFF with the legally required
27 second off-duty meal period is evidenced by DEFENDANT's business records. From time to
28 time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods,

1 and failing to pay minimum wages due for all time worked, the wage statements issued to
2 PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section
3 226(a). The amount in controversy for PLAINTIFF individually does not exceed the sum or
4 value of \$75,000.

5 6 **JURISDICTION AND VENUE**

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

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

16 17 **THE CALIFORNIA CLASS**

18 20. 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
21 all individuals who are or previously were employed by Defendant Sinclair Television of
22 California, LLC and/or California Broadcasting, Inc. in California and paid on a draw vs.
23 commission compensation scheme (the "CALIFORNIA CLASS") at any time during the period
24 beginning four (4) years prior to the filing of this Complaint and ending on the date as
25 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
26 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).

28 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA

1 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
2 accordingly.

3 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 wilfully, engages in a practice whereby DEFENDANT systematically fails to correctly record
7 missed meal and rest breaks and all time worked by PLAINTIFF and the other members of the
8 CALIFORNIA CLASS, even though DEFENDANT enjoys the benefit of this work, requires
9 employees to perform this work and permits or suffers to permit this work.

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

19 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
20 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
21 employee for all missed meal breaks, as required by California Labor Code.

22 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
25 California law by:

26 (a) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
28 failing to provide PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with all legally required off-duty, uninterrupted
2 thirty (30) minute meal breaks and the legally required paid rest breaks;
3 and,

- 4 (b) Committing an act of unfair competition in violation of the California
5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
6 unlawfully, unfairly and deceptively having in place company policies,
7 practices and procedures that uniformly denied PLAINTIFF and the
8 members of the CALIFORNIA CLASS the correct minimum wages and
9 otherwise violated applicable law.

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

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

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

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

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

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

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

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

26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
27 act on grounds generally applicable to the CALIFORNIA CLASS, making
28 appropriate class-wide relief with respect to the CALIFORNIA CLASS

1 as a whole in that DEFENDANT uniformly failed to pay all wages due to
2 members of the CALIFORNIA CLASS as required by law;

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

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

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

24 2) Class certification will obviate the need for unduly duplicative
25 litigation that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA CLASS, which
28 would establish incompatible standards of conduct for the

1 DEFENDANT; and/or,

2 B. Adjudications with respect to individual members of the
3 CALIFORNIA CLASS would as a practical matter be
4 dispositive of the interests of the other members not parties
5 to the adjudication or substantially impair or impede their
6 ability to protect their interests;

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

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

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

20 (a) The questions of law and fact common to the CALIFORNIA CLASS
21 predominate over any question affecting only individual CALIFORNIA
22 CLASS Members because the DEFENDANT's employment practices are
23 uniform and systematically applied with respect to the CALIFORNIA
24 CLASS;

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 CLASS because in the context of employment litigation a substantial
28 number of individual CALIFORNIA CLASS Members will avoid

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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;

(d) PLAINTIFF, and the other CALIFORNIA 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 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 CLASS for the injuries sustained;

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

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

30. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT’s employees who as have been systematically, intentionally

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

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

6 31. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of Action
7 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
8 are or previously were employed by Defendant Sinclair Television of California, LLC and/or
9 California Broadcasting, Inc. in California (the “CALIFORNIA LABOR SUB-CLASS”) at any
10 time during the period three (3) years prior to the filing of the complaint and ending on the date
11 as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant
12 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
13 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

14 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
15 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
16 requirements, and the applicable provisions of California law, intentionally, knowingly, and
17 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
18 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required
20 employees to perform this work and permitted or suffered to permit this work. DEFENDANT
21 has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which
22 these employees are entitled in order to unfairly cheat the competition and unlawfully profit.
23 To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-
24 CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
25 adjusted accordingly.

26 33. DEFENDANT maintains records from which the Court can ascertain and identify
27 by name and job title, each of DEFENDANT’s employees who have been systematically,
28 intentionally and uniformly subjected to DEFENDANT’s company policy, practices and

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
2 any additional job titles of similarly situated employees when they have been identified.

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

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

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

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

- 22 (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
23 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
24 itemized statement in writing showing the corresponding correct amount
25 of wages earned by the employee, the total amount of hours worked, and
26 the correct legal entity that was their employer;
- 27 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
28 accurately pay the PLAINTIFF and the members of the CALIFORNIA

1 LABOR SUB-CLASS the correct minimum wage pay for which
2 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
3 and,

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

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

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

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

18 (c) The claims of the representative PLAINTIFF are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
20 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
21 is paid on a draw vs. commission compensation scheme who has been
22 subjected to the DEFENDANT's practice and policy which fails to pay
23 the correct amount of wages due to the CALIFORNIA LABOR SUB-
24 CLASS for all time worked. PLAINTIFF sustained economic injury as
25 a result of DEFENDANT's employment practices. PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS were and are
27 similarly or identically harmed by the same unlawful, deceptive, unfair
28 and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUB-CLASS which
17 would establish incompatible standards of conduct for the parties
18 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
25 or refused to act on grounds generally applicable to the CALIFORNIA
26 LABOR SUB-CLASS, making appropriate class-wide relief with respect
27 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
28 DEFENDANT uniformly fails to pay all wages due. Including the correct

1 wages for all time worked by the members of the CALIFORNIA LABOR
2 SUB-CLASS as required by law;

3 (c) Common questions of law and fact predominate as to the members of the
4 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
5 violations of California Law as listed above, and predominate over any
6 question affecting only individual CALIFORNIA LABOR SUB-CLASS
7 Members, and a Class Action is superior to other available methods for
8 the fair and efficient adjudication of the controversy, including
9 consideration of:

10 1) The interests of the members of the CALIFORNIA LABOR SUB-
11 CLASS in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual
13 actions will be avoided to recover the relatively small amount of
14 economic losses sustained by the individual CALIFORNIA
15 LABOR SUB-CLASS Members when compared to the substantial
16 expense and burden of individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative
18 litigation that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will
2 avoid asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's job
4 with DEFENDANT or with a subsequent employer, the Class
5 Action is the only means to assert their claims through a
6 representative; and,

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

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

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 LABOR SUB-CLASS because in the context of employment litigation a
20 substantial number of individual CALIFORNIA LABOR SUB-CLASS
21 Members will avoid asserting their rights individually out of fear of
22 retaliation or adverse impact on their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that it is impractical to bring all members of the CALIFORNIA
25 LABOR SUB-CLASS before the Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
27 Members, will not be able to obtain effective and economic legal redress
28 unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
12 CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
14 ascertainable from the business records of DEFENDANT. The
15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
16 CLASS Members who worked for DEFENDANT in California at any
17 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to bring
19 a efficient and rapid conclusion to all litigation of all wage and hour
20 related claims arising out of the conduct of DEFENDANT as to the
21 members of the CALIFORNIA LABOR SUB-CLASS.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

26 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

27 40. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
3 Code § 17021.

4 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

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

15 Cal. Bus. & Prof. Code § 17203.

16 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
17 engage in a business practice which violates California law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations and the California
19 Labor Code including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1 and 1198
20 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
21 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
22 unfair competition, including restitution of wages wrongfully withheld.

23 44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
24 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
25 unscrupulous or substantially injurious to employees, and were without valid justification or
26 utility for which this Court should issue equitable and injunctive relief pursuant to Section
27 17203 of the California Business & Professions Code, including restitution of wages wrongfully
28 withheld.

45. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods and minimum wages due to a systematic business practice that cannot be justified,
2 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
3 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
4 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
5 wrongfully withheld.

6 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
7 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
8 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
9 DEFENDANT.

10 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
12 to provide all legally required meal and rest breaks to PLAINTIFF and the other members of
13 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

14 48. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
15 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
16 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
17 for each workday in which a second off-duty meal period was not timely provided for each ten
18 (10) hours of work.

19 49. PLAINTIFF further demands on behalf of herself and each member of the
20 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off-
21 duty rest period premium was not timely provided as required by law.

22 50. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
24 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
25 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
26 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
27 to unfairly compete against competitors who comply with the law.

28 51. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California
2 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
3 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
4 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

10 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
11 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
12 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
13 engaging in any unlawful and unfair business practices in the future.

14 54. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
15 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
16 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
17 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
18 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
19 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
20 engage in these unlawful and unfair business practices.

21
22 **SECOND CAUSE OF ACTION**

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

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

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**

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

1 of this Complaint.

2 56. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
3 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
4 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
5 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
6 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
7 duties for the legally required off-duty meal periods. As a result of their rigorous work
8 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
9 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
10 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
11 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
12 by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
13 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

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2 **THIRD CAUSE OF ACTION**

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

4 **[Cal. Lab. Code §§ 226.7 & 512]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
6 **Defendants)**

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

10 60. In addition, because of DEFENDANT's compensation pay plan described
11 herein, DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
12 CLASS Members for their rest periods as required by the applicable Wage Order and Labor
13 Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods
14 to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
15 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-
16 CLASS Members with all the legally required paid rest periods is evidenced by
17 DEFENDANT's business records. Additionally, PLAINTIFF and other CALIFORNIA
18 LABOR SUB-CLASS Members were also from time to time required to work in excess of
19 four (4) hours without being provided ten (10) minute rest periods. Further, these
20 employees were denied their first rest periods of at least ten (10) minutes for some shifts
21 worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
23 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
24 more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were also not provided with one hour wages in lieu thereof. As a result of their
26 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
27 Members were from time to time denied their proper rest periods by DEFENDANT and
28 DEFENDANT's managers.

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

3 68. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of time they worked, including time spent engaging in non sales related work tasks
6 while off the clock. As set forth herein, DEFENDANT’s uniform policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS.

9 69. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
11 result of implementing a uniform policy and practice that denied accurate compensation to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
13 minimum wage pay.

14 70. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately calculated the correct time worked and consequently underpaid the actual time
16 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 71. 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
22 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

26 73. By virtue of DEFENDANT’s unlawful failure to accurately pay all earned
27 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for the true time they worked, PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

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

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

19 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
21 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
22 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
26 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
27 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
28 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA

1 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

2 **FIFTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 226]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
6 **Defendants)**

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

10 78. Cal. Labor Code § 226 provides that an employer must furnish employees with
11 an “accurate itemized” statement in writing showing:

12 (1) gross wages earned,

13 (2) total hours worked by the employee, except for any employee whose compensation
14 is solely based on a salary and who is exempt from payment of overtime under
15 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
16 Commission,

17 (3) the number of piecerate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis,

19 (4) all deductions, provided that all deductions made on written orders of the employee
20 may be aggregated and shown as one item,

21 (5) net wages earned,

22 (6) the inclusive dates of the period for which the employee is paid,

23 (7) the name of the employee and his or her social security number, except that by
24 January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on
26 the itemized statement,

27 (8) the name and address of the legal entity that is the employer, and

28 (9) all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee.

2 79. When DEFENDANT did not accurately record PLAINTIFF's and other
3 CALIFORNIA CLASS Members' missed meal breaks and unpaid rest breaks, and minimum
4 wages, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide
5 an accurate wage statement in writing that properly and accurately itemizes all missed meal
6 periods incurred by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS and thereby also failed to set forth the correct wages earned by the employees. Aside,
8 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
9 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
10 *seq.* , including but not limited to failing to list "hours" worked on PLAINTIFF and other
11 CALIFORNIA LABOR SUB-CLASS Member's pay stubs.

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

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
26 severally, as follows:

- 27 1. On behalf of the CALIFORNIA CLASS:
28 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA


- 1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 2 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 4 C) An order requiring DEFENDANT to pay all sums unlawfully withheld from
- 5 compensation due to PLAINTIFF and the other members of the CALIFORNIA
- 6 CLASS; and,
- 7 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 8 for restitution of the sums incidental to DEFENDANT's violations due to
- 9 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 10 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 11 A) That the Court certify the Second, Third, Fourth and Fifth Causes of Action
- 12 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
- 13 to Cal. Code of Civ. Proc. § 382;
- 14 B) Meal and rest period compensation pursuant to California Labor Code Section
- 15 226.7 and the applicable IWC Wage Order;
- 16 C) Compensatory damages, according to proof at trial, including compensatory
- 17 damages for minimum wage compensation due PLAINTIFF and the other
- 18 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
- 19 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
- 20 statutory rate
- 21 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 22 in which a violation occurs and one hundred dollars (\$100) per each member of
- 23 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 24 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 25 an award of costs for violation of Cal. Lab. Code § 226; and,
- 26 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 27 1197.
- 28 3. On all claims:

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- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.

Dated: August 19, 2019

ZAKAY LAW GROUP, APLC

By: 
Shari O. Zakay
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: August 19 , 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorneys for Plaintiff