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9 Attorneys for Plaintiff

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY ORANGE

12 AARIS WATTS, an individual, on behalf of
13 the State of California,

14 Plaintiff,

15 v.

16 T.R.L. SYSTEMS, INCORPORATED, a
California Corporation, and DOES 1-50,
17 Inclusive,

18 Defendants.

Case No: 30-2019-01102457-CU-OE-CXC

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.

Assigned: Judge Glenda Sanders

Dept: CX101

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21 Plaintiff, AARIS WATTS (hereinafter "PLAINTIFF" or "PLAINTIFFS"), on behalf of the people
22 of the State of California and as "aggrieved employees" acting as a private attorney general under
23 the Labor Code Private Attorney General Action of 2004, § 2699, et seq. ("PAGA") only, alleges
24 on information and belief, except for his own acts and knowledge which are based on personal
25 knowledge, the following:

1 **INTRODUCTION**

2 1. PLAINTIFF brings this action against T.R.L. SYSTEMS, INCORPORATED
3 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for
4 himself, and on behalf of all current and former aggrieved employees that worked for
5 DEFENDANT. At this time, and through this action, PLAINTIFF does **not seek to recover**
6 **anything other than penalties as permitted by California Labor Code § 2699 as interpreted**
7 **by the by the California Supreme Court in ZB, N.A. v. Superior Court (Lawson) 2019 WL**
8 **4309684.**

9 2. To the extent that statutory violations are mentioned for wage violations,
10 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
11 simply the civil penalties permitted by California Labor Code § 2699.

12 3. California has enacted the PAGA to permit an individual to bring an action on
13 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
14 nature of this action.

15 4. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’S
16 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
17 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
18 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

19 **THE PARTIES**

20 5. Defendant T.R.L. Systems, Incorporated is a corporation that at all relevant times
21 mentioned herein conducted and continues to conduct substantial business in the state of
22 California.

23 6. DEFENDANT is a security solutions provider. DEFENDANT offers security
24 services to its clients in the commercial, healthcare, education, industrial, hospitality, government,
25 and transportation fields. DEFENDANT was founded in 1981.

26 7. PLAINTIFF was employed by DEFENDANT from September of 2017 to
27 December of 2018 as and was at all times classified by DEFENDANT as a non-exempt employee,
28 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
minimum and overtime wages due for all time worked.

1 8. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California, (the "AGGRIEVED EMPLOYEES") during
6 the time period of July 30, 2018 until a date as determined by the Court (the "PAGA PERIOD").

7 9. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
8 or formerly employed by DEFENDANT during the PAGA PERIOD, bring this representative
9 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
10 California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558(a)(1)-(2), 1194, 1197,
11 1197.1, 1198, and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all
12 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
13 2699, *et seq.*

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

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

1 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants’
2 agents, servants and/or employees

3 **THE CONDUCT**

4 12. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES pursuant to Carrington v. Starbucks Corp. 2018
7 AJDAR 12157 (Certified for Publication 12/19/18).

8 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
10 the time during which an employee is subject to the control of an employer, including all the time
11 the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and
12 AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
13 DEFENDANT’s control. Specifically, DEFENDANT required PLAINTIFF to work while clocked
14 out during what was supposed to be PLAINTIFF’s off-duty meal break. Indeed there were many
15 days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
16 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly
17 working without their time being accurately recorded and without compensation at the applicable
18 minimum wage and overtime rates. DEFENDANT’s uniform policy and practice not to pay
19 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
20 DEFENDANT’s business records.

21 14. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
22 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
23 EMPLOYEES for the actual time these employees worked each day, including overtime hours. As
24 a result DEFENDANT was able to and did in fact systematically, unlawfully, and unilaterally alter
25 the time recorded in DEFENDANT’s timekeeping system for PLAINTIFF and the members of the
26 AGGRIEVED EMPLOYEES in order to avoid paying these employees the applicable overtime
27 compensation for overtime worked and to avoid paying these employees for missed meal breaks.
28 As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by regularly

1 working without their time being accurately recorded and without compensation at the applicable
2 overtime rates.

3 15. The mutability of the timekeeping system also allowed DEFENDANT to alter
4 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
5 timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED
6 EMPLOYEES clocked out for a thirty (30) minute meal break when in fact the employees were not
7 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's
8 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
9 breaks each day or otherwise compensate them for missed meal breaks. As a result of their rigorous
10 work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were also from time to time
11 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their
12 meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work
13 as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
14 meal break. Further, DEFENDANT failed to provide PLAINTIFF and AGGRIEVED
15 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
16 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
17 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and
18 in accordance with DEFENDANT's strict corporate policy and practice.

19 16. In addition, DEFENDANT required PLAINTIFF and other AGGRIEVED
20 EMPLOYEES to engage in additional work, after already clocking out of DEFENDANT's
21 timekeeping system, by having to submit resolution reports to DEFENDANT detailing the service
22 calls PLAINTIFF and other AGGRIEVED EMPLOYEES completed each day. These actions
23 resulted in a second reporting for work in a single workday. In such a circumstance of a second
24 reporting for work in a single workday, DEFENDANT failed to pay these employees reporting time
25 pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is
26 required to report for work a second time in any one workday and is furnished less than two (2)
27 hours of work on the second reporting, said employee shall be paid for two (2) hours at the
28 employee's regular rate of pay, which shall not be less than the minimum wage." Cal. Code Regs.,
tit. 8, § 11040, subd. 5(B).

1 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
2 were also required from time to time to work in excess of four (4) hours without being provided ten
3 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
4 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first
5 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
6 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
7 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As a
9 result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were
10 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
11 managers.

12 18. When PLAINTIFF and other AGGRIEVED EMPLOYEES were required to miss
13 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES with complete and accurate wage statements which failed to show, among other
15 things, the correct wages paid for missed meal and rest breaks. Cal. Lab. Code § 226 provides that
16 every employer shall furnish each of his or her employees with an accurate itemized wage statement
17 in writing showing, among other things, gross wages earned and all applicable hourly rates in effect
18 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
19 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
20 itemized wage statement that lists all the requirements under California Labor Code 226 et seq. As
21 a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

23 19. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and
27 rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully avoid
28 the payment for all time worked as required by California law which allows DEFENDANT to
illegally profit and gain an unfair advantage over competitors who complied with the law. To the

1 extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

3 20. The proper recording of these employees' missed meal and rest breaks is the
4 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to
5 meet this burden, DEFENDANT failed to properly calculate and/or pay all required compensation
6 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code
7 and regulations promulgated thereunder as herein alleged.

8 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
9 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor
10 Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT did not
11 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
12 also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work
13 performed by the PLAINTIFF did not prevent him from being relieved of all of his duties for the
14 legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF
15 with the legally required meal periods is evidenced by DEFENDANT's business records. As a result
16 of DEFENDANT not accurately recording all missed meal and rest periods and/or minimum and
17 overtime wages due, the wage statements issued to PLAINTIFF by DEFENDANT violated
18 California law, and in particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay
19 PLAINTIFF all of his wages due to him and DEFENDANT has failed to pay any penalty wages
20 owed to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF
21 individually does not exceed the sum or value of \$75,000.

22 **JURISDICTION AND VENUE**

23 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10.

25 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
27 maintained offices and facilities in this County and/or conduct substantial business in this County,
28 and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and
the AGGRIEVED EMPLOYEES.

1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2698 et seq.)**

4 (Alleged by PLAINTIFF against all Defendants)

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

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

16 26. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, brings this Representative Action on behalf of the State of California with respect to
19 themselves and all individuals who are or previously were employed by DEFENDANT and
20 classified as non-exempt employees in California during the time period of July 30, 2018 until
21 the present (the "AGGRIEVED EMPLOYEES").

22 27. On July 30, 2019, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific
24 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
25 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for PLAINTIFF to make these allegations in the Complaint has expired. As a result,
27 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
28 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
AGGRIEVED EMPLOYEES as herein defined.

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DEMAND FOR A JURY TRIAL

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

DATED: 10/4, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #22901

July 30, 2019

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

Online Filing

T.R.L. SYSTEMS, INCORPORATED

c/o MARK LAWRENCE PURDY

2230 LAUREL WAY

UPLAND CA 91784

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

Dear Sir/Madam:

Our offices represent Plaintiff Aaris Watts (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against T.R.L. Systems Incorporated, a California Corporation. (“Defendant”). Plaintiff was employed by Defendant in California from September 2017 to December 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including minimum wage and overtime. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

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

Shani O. Zakay
Attorney for Aaris Watts

1 **ZAKAY LAW GROUP, APLC**
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5 [Additional Counsel Listed on Next Page]

6 Attorneys for Plaintiff

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ORANGE COUNTY**

10
11 AARIS WATTS, an individual, on behalf
of himself and on behalf of all persons
12 similarly situated,

13
14 Plaintiff,

15 vs.

16 T.R.L. SYSTEMS, INCORPORATED, a
California Corporation; and DOES 1
17 through 50, inclusive,

18
19 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

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3 2255 Calle Clara

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6 Attorneys for Plaintiff

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

4
5 **THE PARTIES**

6 1. Defendant T.R.L. Systems, Incorporated is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. DEFENDANT is a security solutions provider. DEFENDANT offers security
10 services to its clients in the commercial, healthcare, education, industrial, hospitality,
11 government, and transportation fields. DEFENDANT was founded in 1981.

12 3. PLAINTIFF was employed by DEFENDANT from September of 2017 to
13 December of 2018 as and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

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

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

1 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA
2 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
3 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
4 economically injured by DEFENDANT's past and current unlawful conduct, and all other
5 appropriate legal and equitable relief.

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

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

23 THE CONDUCT

24
25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. Indeed
4 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
5 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
6 compensation by regularly working without their time being accurately recorded and without
7 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
8 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
9 time worked is evidenced by DEFENDANT's business records.

10 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
11 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
12 CALIFORNIA CLASS Members for the actual time these employees worked each day,
13 including overtime hours. As a result DEFENDANT was able to and did in fact systematically,
14 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping system for
15 PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
16 employees the applicable overtime compensation for overtime worked and to avoid paying these
17 employees for missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS
18 Members forfeited time worked by regularly working without their time being accurately
19 recorded and without compensation at the applicable overtime rates.

20 10. The mutability of the timekeeping system also allowed DEFENDANT to alter
21 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
22 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
23 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
24 were not at all times provided an off-duty meal break. This practice is a direct result of
25 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
26 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.
27 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
28 Members were also from time to time unable to take thirty (30) minute off duty meal breaks and

1 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
2 CLASS Members were required to perform work as ordered by DEFENDANT for more than
3 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed
4 to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal
5 period for some workdays in which these employees were required by DEFENDANT to work
6 ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS
7 therefore forfeited meal breaks without additional compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain
9 adequate staffing levels while increasing the production levels for each employee at the busy
10 airports they provided services for.

11 11. In addition, DEFENDANT required PLAINTIFF and other CALIFORNIA
12 CLASS Members to engage in additional work, after already clocking out of DEFENDANT's
13 timekeeping system, by having to submit resolution reports to DEFENDANT detailing the
14 service calls PLAINTIFF and other CALIFORNIA CLASS Members completed each day.
15 These actions resulted in a second reporting for work in a single workday. In such a
16 circumstance of a second reporting for work in a single workday, DEFENDANT failed to pay
17 these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision
18 5(B) states: "If an employee is required to report for work a second time in any one workday
19 and is furnished less than two (2) hours of work on the second reporting, said employee shall
20 be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the
21 minimum wage." Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

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

1 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
2 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
3 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
4 proper rest periods by DEFENDANT and DEFENDANT's managers.

5 13. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
6 miss meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which
8 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
9 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
10 an accurate itemized wage statement in writing showing, among other things, gross wages
11 earned and all applicable hourly rates in effect during the pay period and the corresponding
12 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANT
13 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
14 Section 226(a) in that DEFENDANT failed to correctly list the correct name of the legal entity
15 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
16 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
17 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
18 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
19 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

20 14. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
22 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
24 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
25 to purposefully avoid the payment for all time worked as required by California law which
26 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
27 complied with the law. To the extent equitable tolling operates to toll claims by the
28 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be

1 adjusted accordingly.

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

12 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
13 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
14 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
15 did not have a policy or practice which provided timely off-duty meal and rest breaks to
16 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
17 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
18 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
19 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
20 DEFENDANT’s business records. As a result of DEFENDANT not accurately recording all
21 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
22 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
23 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
24 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
25 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
26 the sum or value of \$75,000.

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1 **JURISDICTION AND VENUE**

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

6 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
8 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
9 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
10 committed the wrongful conduct herein alleged in this County against members of the
11 CALIFORNIA CLASS.

12
13 **THE CALIFORNIA CLASS**

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

23 20. To the extent equitable tolling operates to toll claims by the CALIFORNIA
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
25 accordingly.

26 21. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

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

14 23. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
19 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that uniformly and systematically failed to record and pay PLAINTIFF
22 and the other members of the CALIFORNIA CLASS for all time worked,
23 including reporting time pay, minimum wages owed and overtime wages
24 owed for work performed by these employees; and,
25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.

28 25. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

3 (a) Without class certification and determination of declaratory, injunctive,
4 statutory and other legal questions within the class format, prosecution of
5 separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

11 2) Adjudication with respect to individual members of the
12 CALIFORNIA CLASS which would as a practical matter be
13 dispositive of interests of the other members not party to the
14 adjudication or substantially impair or impede their ability to
15 protect their interests.

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
17 act on grounds generally applicable to the CALIFORNIA CLASS, making
18 appropriate class-wide relief with respect to the CALIFORNIA CLASS
19 as a whole in that DEFENDANT uniformly failed to pay all wages due to
20 members of the CALIFORNIA CLASS as required by law;

21 1) With respect to the First Cause of Action, the final relief on behalf
22 of the CALIFORNIA CLASS sought does not relate exclusively to
23 restitution because through this claim PLAINTIFF seeks
24 declaratory relief holding that the DEFENDANT's policy and
25 practices constitute unfair competition, along with declaratory
26 relief, injunctive relief, and incidental equitable relief as may be
27 necessary to prevent and remedy the conduct declared to constitute
28 unfair competition;

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

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

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

16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or,

20 B. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not parties
23 to the adjudication or substantially impair or impede their
24 ability to protect their interests;

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT, which
28 may adversely affect an individual's job with DEFENDANT or

1 with a subsequent employer, the Class Action is the only means to
2 assert their claims through a representative; and,

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

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

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

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of
7 the CALIFORNIA CLASS for the injuries sustained;

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

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

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

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

22
23 **THE CALIFORNIA LABOR SUB-CLASS**

24 29. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
25 Causes of Action on behalf of a California sub-class, defined as all members of the
26 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
27 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
28 to the filing of the complaint and ending on the date as determined by the Court (the

1 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
2 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
3 Members is under five million dollars (\$5,000,000.00).

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

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

21 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 compensation due to members of the CALIFORNIA LABOR SUB-
27 CLASS for missed meal and rest breaks in violation of the California
28 Labor Code and California regulations and the applicable California Wage

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Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT’s conduct was willful.

34. 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 the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks; and,
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that

1 when an employee is discharged or quits from employment, the employer
2 must pay the employee all wages due without abatement, by failing to
3 tender full payment and/or restitution of wages owed or in the manner
4 required by California law to the members of the CALIFORNIA LABOR
5 SUB-CLASS who have terminated their employment.

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

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

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

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

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

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

7 36. 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,
10 statutory and other legal questions within the class format, prosecution of
11 separate actions by individual members of the CALIFORNIA LABOR
12 SUB-CLASS will 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 parties
16 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

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

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

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

26 3) In the context of wage litigation because a substantial number of
27 individual CALIFORNIA LABOR SUB-CLASS Members will
28 avoid asserting their legal rights out of fear of retaliation by

1 DEFENDANT, which may adversely affect an individual's job
2 with DEFENDANT or with a subsequent employer, the Class
3 Action is the only means to assert their claims through a
4 representative; and,

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

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

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

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of
6 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members who worked for DEFENDANT in California at any
15 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

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

28 39. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.

1 Code § 17021.

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

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

10 Cal. Bus. & Prof. Code § 17203.

11 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Industrial Wage Order(s), the California Code of Regulations and the California
14 Labor Code including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1 & 1198. for
15 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
16 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
17 unfair competition, including restitution of wages wrongfully withheld.

18 42. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
19 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 43. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated reporting time pay, meal and rest periods, and the required amount of compensation
27 for missed meal and rest periods and overtime and minimum wages owed, due to a systematic
28 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and

1 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
2 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
3 Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

26 49. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California
28 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

22 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

24 **and Against All Defendants)**

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

28 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor
2 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to
3 accurately calculate and pay reporting time and minimum wages to PLAINTIFF and
4 CALIFORNIA CLASS Members.

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

7 56. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than
9 the minimum so fixed in unlawful.

10 57. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
11 including reporting time pay and minimum wage compensation and interest thereon, together
12 with the costs of suit.

13 58. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
15 amount of time they work. As set forth herein, DEFENDANT’s uniform policy and practice
16 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS.

18 59. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
20 result of implementing a uniform policy and practice that denies accurate compensation to
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
22 minimum wage pay.

23 60. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately calculated the correct time worked and consequently underpaid the actual time
25 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
26 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
27 benefits in violation of the California Labor Code, the Industrial Welfare Commission
28 requirements and other applicable laws and regulations.

1 61. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
3 receive the correct reporting time pay and minimum wage compensation for their time worked
4 for DEFENDANT.

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

8 63. By virtue of DEFENDANT’s unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

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

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

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

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

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

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

21 74. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
24 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
25 of the California Labor Code, the Industrial Welfare Commission requirements and other
26 applicable laws and regulations.

27 75. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
28 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive full compensation for overtime worked.

2 76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
3 from the overtime requirements of the law. None of these exemptions are applicable to the
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
6 subject to a valid collective bargaining agreement that would preclude the causes of action
7 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
8 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
9 negotiable, non-waiveable rights provided by the State of California.

10 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
11 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
12 worked that they are entitled to, constituting a failure to pay all earned wages..

13 78. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
14 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
15 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
16 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
17 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
18 failed to accurately record and pay as evidenced by DEFENDANT's business records and
19 witnessed by employees.

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

26 80. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
28 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
4 overtime worked.

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

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

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FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

84. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT’s business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

85. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
2 each workday that a meal period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

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

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

26 89. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
28 CLASS Members who were not provided a rest period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee’s regular rate of pay for each
2 workday that rest period was not provided.

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

7
8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

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

16 92. Cal. Labor Code § 226 provides that an employer must furnish employees with
17 an “accurate itemized” statement in writing showing:

- 18 (1) gross wages earned,
19 (2) total hours worked by the employee, except for any employee whose compensation
20 is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
22 Commission,
23 (3) the number of piecerate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item,
27 (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid,

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

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

6 (9) all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee.

8 93. When DEFENDANT did not accurately record PLAINTIFF's and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANT violated Cal.
10 Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing
11 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
12 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
13 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
14 wage statements DEFENDANT issued to PLAINTIFF and other CALIFORNIA CLASS
15 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANT failed to correctly list
16 the correct name of the legal entity that was the employer of PLAINTIFF and the
17 CALIFORNIA CLASS Members.

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

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SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

96. Cal. Lab. Code § 200 provides that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

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

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

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

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

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

100. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
2 who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

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

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

- 28 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth

1 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
2 action pursuant to Cal. Code of Civ. Proc. § 382;

3 B) Compensatory damages, according to proof at trial, including compensatory
4 damages for minimum and overtime compensation due PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
6 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
7 statutory rate;

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

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

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

18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit; and,

21 G) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1.

22 3. On all claims:

23 A) An award of interest, including prejudgment interest at the legal rate;

24 B) Such other and further relief as the Court deems just and equitable; and,

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or
27 §1198.

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Dated: July 30, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani 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: July 30, 2019

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By: _____
Shani O. Zakay
Attorneys for Plaintiff