

**SUMMONS  
(CITACION JUDICIAL)**

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

HTL CONRAD DOMESTIC, LLC, a Delaware limited liability company; and DOES 1 through 50, Inclusive;

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

SALVADOR CHAVEZ, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/26/2020** at 08:00:00 AM  
Clerk of the Superior Court  
By Marc David, Deputy Clerk

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es):  
San Diego Superior Court, Hall of Justice  
330 W. Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2020-00016193-CU-OE-CTL  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291  
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 05/28/2020  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) M. David (Adjunto)

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



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

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

**05/26/2020** at 08:00:00 AM

Clerk of the Superior Court  
By Marc David, Deputy Clerk

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14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF SAN DIEGO**

17 SALVADOR CHAVEZ, an individual, on  
18 behalf of himself, and on behalf of all persons  
19 similarly situated,

20 Plaintiffs,

21 vs.

22 HTL CONRAD DOMESTIC, LLC, a Delaware  
23 limited liability company; and DOES 1 through  
24 50, Inclusive;

25 DEFENDANTS.

Case No. 37-2020-00016193-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

**DEMAND FOR JURY TRIAL**

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

5 **THE PARTIES**

6 1. Defendant HLT CONRAD DOMESTIC, LLC (“DEFENDANT”) is a Delaware limited  
7 liability company that at all relevant times mentioned herein conducted and continues to conduct  
8 substantial business in the state of California, county of San Diego, City of San Diego, owns, operates  
9 and/or manages Hilton branded hotels including the San Diego Hilton Bayfront..

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

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

26 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
27 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused  
28

1 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to  
3 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of  
5 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,  
6 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee  
7 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties  
8 for each underpaid employee.

9 6. PLAINTIFF has been employed by DEFENDANTS at the Hilton San Diego Bayfront as  
10 a non-exempt carpenter and plant mechanic, paid on an hourly basis, entitled to certain non-  
11 discretionary incentive compensation, bonuses, overtime pay and legally compliant meal and rest  
12 periods from November 2008 until his constructive termination in August 2019.

13 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of  
14 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")  
15 at any time between April 6, 2016 on a date determined by the Court (the "CLASS PERIOD"). The  
16 amount in controversy for the aggregate claim of CALIFORNIA CLASS members is  
17 under five million dollars (\$5,000,000.00).

18 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the  
19 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their  
20 losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy  
21 and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS  
22 with legally complaint meal and rest periods or an additional hour of pay at the regular  
23 rate of compensation in lieu thereof in violation of California Labor Code Sections  
24 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2)  
25 failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in  
26 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1,  
27 and (3) failed to provide accurate itemized wage statements in violation of California  
28 Labor Code Sections 226 and 226.3.





1 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who  
2 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
3 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

5 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were  
6 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning  
7 the time during which an employee is subject to the control of an employer, including all the time the  
8 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, as a result  
9 of their overburdened work requirements, inadequate staffing and not being relived of cordless  
10 communication devices during their shifts, DEFENDANTS required PLAINTIFF and CALIFORNIA  
11 CLASS members to work without paying them for all the time they were under DEFENDANTS'  
12 control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what  
13 was supposed to be PLAINTIFF's off-duty meal break. DEFENDANT required PLAINITIFF and  
14 members of the CALIFORNIA CLASS to carry cordless communication devices throughout their  
15 works shifts and to remain at the ready to respond to work related issues and tasks communicated  
16 through the cordless communication device. DEFENDANT did not have a policy or practice to relieve  
17 PLAINTIFF and the members of the CALIFORNIA CLASS of their communication device during  
18 what was supposed to be an off-duty meal period. PLAINTIFF was from time to time interrupted by  
19 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
20 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the  
21 PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages  
22 by regularly working without their time being accurately recorded and without compensation at the  
23 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay  
24 PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced by  
25 DEFENDANTS' business records.

26 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
27 schedules, inadequate staffing and not being relieved of cordless communication devices, PLAINTIFF  
28 and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute



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

13 **B. Rest Period Violations**

14 16. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor  
15 Codes, an employer shall authorize and permit all employees to take a rest periods, which so far as  
16 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)  
17 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an  
18 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee’s  
19 regular rate of compensation for each workday that the rest period is not provided.

20 17. From time-to-time during the CLASS PERIOD, as a result of their overburdened work  
21 requirements, inadequate staffing and not being relieved of cordless communication devices during their  
22 shifts, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to  
23 work in excess of four (4) hours without being provided duty-free ten (10) minute rest periods. Further,  
24 these employees were denied their first duty-free rest periods of at least ten (10) minutes for some shifts  
25 worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least  
26 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and  
27 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
28 or more from time to time. DEFENDANT required PLAINTIFF and members of the CALIFORNIA



1 CLASS to carry cordless communication devices and to remain at the ready to respond to work related  
2 issues and tasks communicated through the cordless communication device throughout their works  
3 shifts. DEFENDANT did not have a policy or practice to relieve PLAINTIFF and the members of the  
4 CALIFORNIA CLASS of their communication device during what was supposed to be an off-duty rest  
5 period. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour  
6 wages in lieu thereof.

7 **C. Overtime Regular Rate Violation**

8 18. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
9 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for  
10 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members  
11 forfeited wages due them for working overtime without compensation at the correct overtime rates.  
12 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the  
13 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by  
14 DEFENDANTS' business records.

15 19. State law provides that employees must be paid overtime at one-and-one-half times their  
16 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at  
17 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's  
18 performance.

19 20. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'  
20 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid  
21 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for  
22 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an  
23 hourly basis with flat-sum bonus compensation when the employees met the various performance goals  
24 set by DEFENDANTS. These flat-sum incentive payments are identified as "Shift Differ" and "Meal  
25 Adds t" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA  
26 CLASS members.

27 21. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods  
28 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-



1 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-  
2 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all  
3 hours worked rather than just all non-overtime hours worked. Management and supervisors described  
4 the incentive/bonus program to potential and new employees as part of the compensation package. As  
5 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS  
6 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic  
7 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members  
8 by DEFENDANTS.

9 22. From time-to-time during the CLASS PERIOD, PLAINTIFF earned "Shift Differ"  
10 compensation and worked overtime compensation throughout his employment with DEFENDANTS  
11 including, but not limited to the pay period beginning on August 9 to August 22, 2019.  
12 Notwithstanding, DEFENDANTS failed to accurately calculate the non-discretionary, flat-sum bonus  
13 entitled "Shift Differ" into the regular rate pay for purposes of PLAINTIFF's overtime compensation.  
14 The failure to do so has resulted in an underpayment of overtime compensation to plaintiff PLAINITFF  
15 during this pay period.

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

25 **D. Meal Period Premium Violations**

26 24. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
27 fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS  
28 their missed meal and rest period premiums. As a result, PLAINTIFF and the other CALIFORNIA



1 CLASS members forfeited wages due them for their missed meal and reset periods without  
2 compensation at the correct missed meal and rest period rates. DEFENDANTS' uniform policy and  
3 practice to not pay the CALIFORNIA CLASS members the correct rate for all missed meal and rest  
4 period premium payment in accordance with applicable law is evidenced by DEFENDANTS' business  
5 records.

6 25. State law provides that employees must be paid premium hour of pay at the employee's  
7 "regular rate of compensation" for each workday that the meal or rest period is not provided.  
8 PLAINTIFF and other CALIFORNIA CLASS members were compensated at an hourly rate plus a  
9 non-discretionary incentive pay that was tied to specific elements of an employee's performance. These  
10 non-discretionary incentive payments are identified as "Shift Differ" and "Meal Adds t" in the wage  
11 statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

12 26. The second component of PLAINTIFF's and other CALIFORNIA CLASS members'  
13 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and  
14 other members of the CALIFORNIA CLASS incentive wages based on their performance for  
15 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an hourly  
16 basis with incentive compensation when the employees met the various performance goals set by  
17 DEFENDANTS. However, when calculating the regular rate of pay in order to pay missed rest and  
18 meal period premiums to PLAINTIFF and other CALIFORNIA CLASS members, DEFENDANTS  
19 failed to include the incentive compensation as part of the employees' "regular rate of compensation"  
20 for purposes of calculating missed rest and meal period premiums. Management and supervisors  
21 described the incentive program to potential and new employees as part of the compensation package.  
22 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
23 CLASS members must be included in the "regular rate of compensation." The failure to do so has  
24 resulted in a systematic underpayment of premium pay for missed meal and rest periods to PLAINTIFF  
25 and other CALIFORNIA CLASS members by DEFENDANTS.

26 27. In violation of the applicable sections of the California Labor Code and the requirements  
27 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
28 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the



1 other members CALIFORNIA CLASS at the correct rate of pay for all missed meal and rest period  
2 premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the  
3 payment of the correct missed meal and rest period premium compensation as required by California  
4 law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors  
5 who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
6 CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **E. Wage Statement Violations**

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

16 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
17 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal  
18 and rest period premiums, or were paid overtime in the same pay period where they earned a non-  
19 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other  
20 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to  
21 show, among other things, all applicable hourly rates in effect during the pay period and the  
22 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or  
23 missed meal and rest periods.

24 30. For instance, for the pay period between June 24, 2019 and June 27, 2019, PLAINTIFF  
25 received remuneration from DEFENDANTS described as “Retro Active” in the gross amount of  
26 \$89.02. DEFENDANTS violated California Labor Code Section 226 by failing to list the applicable  
27 hourly rate and the corresponding number of hours worked at the applicable hourly rate for this line  
28 item of remuneration described as “Retro Active”. PLAINTIFF, and all those similarly situated



1 members of the CALIFORNIA CLASS, suffered damage as a result of DEFENDANTS'  
2 aforementioned violation because he could not promptly and easily determine from the wage statement  
3 alone the applicable hourly rate and the corresponding number of hours worked at the applicable hourly  
4 rate for this line item of remuneration described as "Retro Active".

5 31. As a result, DEFENDANTS issued PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
7 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional  
8 payroll error due to clerical or inadvertent mistake.

9 32. To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation, and  
10 the meal and rest break premiums still owed to him or any penalty wages owed to him under Cal. Lab.  
11 Code § 203.

12 **CLASS ACTION ALLEGATIONS**

13 33. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant  
14 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-  
15 exempt California employees ("CALIFORNIA CLASS") between April 6, 2016 and a date determined  
16 by the Court ("CLASS PERIOD").

17 34. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been  
18 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid  
19 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal  
20 and rest period policies, failure to separately compensate rest periods, failure to separately compensate  
21 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain  
22 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

23 35. The members of the class are so numerous that joinder of all class members is impractical.

24 36. Common questions of law and fact regarding DEFENDANTS' conduct, including but not  
25 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate  
26 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of  
27 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and  
28 rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are



1 paid at least minimum wage and overtime, exist as to all members of the class and predominate over  
2 any questions affecting solely any individual members of the class. Among the questions of law and fact  
3 common to the class are:

- 4 a. Whether DEFENDANTS maintained legally compliant meal period  
5 policies and practices;
- 6 b. Whether DEFENDANTS maintained legally compliant rest period  
7 policies and practices;
- 8 c. Whether DEFENDANTS failed to pay PLAINTIFF and the  
9 CALIFORNIA CLASS members accurate premium payments for missed  
10 meal and rest periods;
- 11 d. Whether DEFENDANTS failed to pay PLAINTIFF and the  
12 CALIFORNIA CLASS members accurate overtime wages.
- 13 e. Whether DEFENDANTS failed to pay PLAINTIFF and the  
14 CALIFORNIA CLASS members at least minimum wage for all hours  
15 worked.
- 16 f. Whether DEFENDANTS issued legally compliant wage statements;
- 17 g. Whether DEFENDANTS committed an act of unfair competition by  
18 systematically failing to record and pay PLAINTIFF and the other members  
19 of the CALIFORNIA CLASS for all time worked;
- 20 h. Whether DEFENDANTS committed an act of unfair competition by  
21 systematically failing to record all meal and rest breaks missed by  
22 PLAINTIFF and other CALIFORNIA CLASS members, even though  
23 DEFENDANTS enjoyed the benefit of this work, required employees to  
24 perform this work and permits or suffers to permit this work;
- 25 i. Whether DEFENDANTS committed an act of unfair competition in  
26 violation of the UCL, by failing to provide the PLAINTIFF and the other  
27 members of the CALIFORNIA CLASS with the legally required meal and  
28 rest periods; and,

1           37.     PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result  
2 of DEFENDANTS' conduct and actions alleged herein.

3           38.     PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same  
4 interests as the other members of the class.

5           39.     PLAINTIFF will fairly and adequately represent and protect the interests of the  
6 CALIFORNIA CLASS members.

7           40.     PLAINTIFF retained able class counsel with extensive experience in class action  
8 litigation.

9           41.     Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests  
10 of the other CALIFORNIA CLASS members.

11          42.     There is a strong community of interest among PLAINTIFF and the members of the  
12 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient  
13 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

14          43.     The questions of law and fact common to the CALIFORNIA CLASS members  
15 predominate over any questions affecting only individual members, including legal and factual issues  
16 relating to liability and damages.

17          44.     A class action is superior to other available methods for the fair and efficient adjudication  
18 of this controversy because joinder of all class members is impractical. Moreover, since the damages  
19 suffered by individual members of the class may be relatively small, the expense and burden of  
20 individual litigation makes it practically impossible for the members of the class individually to redress  
21 the wrongs done to them. Without class certification and determination of declaratory, injunctive,  
22 statutory and other legal questions within the class format, prosecution of separate actions by individual  
23 members of the CALIFORNIA CLASS will create the risk of:

24           a.     Inconsistent or varying adjudications with respect to individual members of the  
25 CALIFORNIA CLASS which would establish incompatible standards of conduct for the  
26 parties opposing the CALIFORNIA CLASS; and/or,

27           b.     Adjudication with respect to individual members of the CALIFORNIA CLASS  
28 which would as a practical matter be dispositive of the interests of the other members not



1 party to the adjudication or substantially impair or impeded their ability to protect their  
2 interests.

3 45. Class treatment provides manageable judicial treatment calculated to bring an efficient  
4 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of  
5 DEFENDANTS.

6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

12 47. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §  
13 17021.

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

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

25 Cal. Bus. & Prof. Code § 17203.

26 49. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA  
27 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in  
28 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the

1 “UCL”), by engaging and continuing to engage in business practices which violates California law,  
2 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations  
3 and the California Labor Code including Sections 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1,  
4 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
5 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
6 unfair competition, including restitution of wages wrongfully withheld.

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

12 51. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent  
13 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated  
14 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,  
15 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic  
16 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial  
17 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
18 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
19 restitution of wages wrongfully withheld.

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

23 53. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and  
24 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,  
25 provide the legally mandated meal and rest periods, the required accurate amount of compensation for  
26 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage  
27 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.  
28 Labor Code.

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

5           55.     PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA  
6 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not  
7 timely provided as required by law.

8           56.     PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the  
9 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately  
10 calculated overtime and missed meal and rest periods premiums.

11          57.     By and through the unlawful and unfair business practices described herein,  
12 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other  
13 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has  
14 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of  
15 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly  
16 compete against competitors who comply with the law.

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

22          59.     PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,  
23 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS  
24 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been  
25 deprived, by means of the above described unlawful and unfair business practices, including earned but  
26 unpaid wages for all overtime worked.

27          60.     PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,  
28 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and

1 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and  
2 unfair business practices in the future.

3 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy  
4 and/or adequate remedy at law that will end the unlawful and unfair business practices of  
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result  
6 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of  
7 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic  
8 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair  
9 business practices.

10 **SECOND CAUSE OF ACTION**

11 **For Failure to Pay Overtime Compensation**

12 **[Cal. Lab. Code §§ 510, *et seq.*]**

13 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

16 63. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between  
17 April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful  
18 and intentional violations of the California Labor Code and the Industrial Welfare Commission  
19 requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including,  
20 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or  
21 forty (40) hours in any workweek.

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

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

27 66. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including  
28 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198

1 further states that the employment of an employee for longer hours than those fixed by the Industrial  
2 Welfare Commission is unlawful.

3 67. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members  
4 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they  
5 worked or were not accurately compensated for all overtime hours worked.

6 68. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
8 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other  
9 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other  
10 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed  
11 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours  
12 in any workweek.

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

19 70. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
20 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for  
21 all overtime worked.

22 71. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the  
23 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other  
24 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude  
26 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on  
27 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-  
28 negotiable, non-waivable rights provided by the State of California.

1           72.     During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure  
3 to pay all earned wages.

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

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

15          75.     DEFENDANTS knew or should have known that PLAINTIFF and the other members of  
16 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS  
17 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay  
18 employees for their labor as a matter of uniform company policy, practice and procedure, and  
19 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
20 members of the CALIFORNIA CLASS for overtime worked.

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

28          77.     PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request

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

10 **THIRD CAUSE OF ACTION**

11 **For Failure to Pay Minimum Wages**

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

13 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

16 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
17 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial  
18 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay  
19 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the  
20 LABOR CLASS PERIOD.

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

23 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
25 minimum so fixed is unlawful.

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

28 83. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other

1 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For  
2 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to  
3 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without  
4 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to  
5 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members  
6 of the CALIFORNIA CLASS.

7 84. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
8 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
9 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members  
10 of the CALIFORNIA CLASS in regard to minimum wage pay.

11 85. In committing these violations of the California Labor Code, DEFENDANTS inaccurately  
12 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF  
13 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid  
14 the payment of all earned wages, and other benefits in violation of the California Labor Code, the  
15 Industrial Welfare Commission requirements and other applicable laws and regulations.

16 86. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum  
18 wage compensation for their time worked for DEFENDANTS.

19 87. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure  
21 to pay all earned wages.

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

27 89. DEFENDANTS knew or should have known that PLAINTIFF and the other members of  
28 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS

1 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay  
2 employees for their labor as a matter of uniform company policy, practice and procedure, and  
3 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

28 93. From time-to-time during the LABOR CLASS PERIOD, as a result of their overburdened



1 work requirements, inadequate staffing and not being relieved of cordless communication devices during  
2 their shifts, DEFENDANTS failed to provide all the legally required off-duty meal breaks to  
3 PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order  
4 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS  
5 members did not prevent these employees from being relieved of all of their duties for the legally  
6 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other  
7 CALIFORNIA CLASS members were from time to time not fully relieved of duty by DEFENDANTS  
8 for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the  
9 CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work  
10 is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to  
11 provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some  
12 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work.  
13 As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal  
14 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy  
15 and practice.

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

7 97. From time-time during the LABOR CLASS PERIOD, as a result of their overburdened  
8 work requirements, inadequate staffing and not being relived of cordless communication devices during  
9 their shifts, PLAINTIFF and other CALIFORNIA CLASS members were from time to time required to  
10 work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these  
11 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at  
12 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts  
13 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten  
14 (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other  
15 CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a  
16 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were  
17 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226 and 226.2]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

27 102. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS also failed to  
28 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate

1 wage statements which failed to accurately show, among other things, (1) total number of hours  
2 worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during  
3 the pay period and the corresponding number of hours worked at each hourly rate by the employee in  
4 violation of California Labor Code Section 226.

5 103. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §  
6 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA  
7 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for  
8 the overtime worked and the amount of employment taxes which were not properly paid to state and  
9 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other  
10 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)  
11 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
12 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and  
13 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time  
14 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective  
15 member of the CALIFORNIA CLASS herein.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES WHEN DUE**

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

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

22 105. Cal. Lab. Code § 200 provides that:

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



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

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

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

14           108. There is no definite term in PLAINTIFF’s or any CALIFORNIA CLASS members’  
15 employment contract.

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

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

23           110. During the LABOR CLASS PERIOD, the employment of many CALIFORNIA CLASS  
24 members terminated, and DEFENDANTS have not tendered payment of wages, to these employees  
25 who missed meal and rest breaks and/or were underpaid overtime, or worked off the clock during what  
26 was supposed to be off duty meal periods, as required by law.

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and  
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as  
6 a class action pursuant to Cal. Code of Civ. Proc. § 382;

7 B) An order temporarily, preliminarily and permanently enjoining and restraining  
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

9 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld  
10 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

11 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for  
12 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other  
13 members of the CALIFORNIA CLASS.

14 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of  
15 Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §  
16 382;

17 1. Compensatory damages, according to proof at trial, including compensatory  
18 damages for unpaid minimum wages and overtime compensation due PLAINTIFF and the other  
19 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus  
20 interest thereon at the statutory rate;

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

25 3. Meal and rest period compensation pursuant to California Labor Code Section  
26 226.7, 512 and the applicable IWC Wage Order;

27 4. Waiting time penalties pursuant to Labor Code Section 201, 202 and 203;

