

**SUMMONS  
(CITACION JUDICIAL)**

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

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

NIKI INVESTMENTS, INC., a California Corporation; and DOES 1-50, Inclusive,

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

OMAR HAZNEDAR and PHILIP SOTO, individuals, on behalf of themselves and on behalf of all persons similarly situated,

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

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

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/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.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):

Orange Superior Court, Civil Complex Center  
751 W. Santa Ana Blvd.  
Santa Ana, CA 92701

CASE NUMBER:  
(Nº) 30-2021-01213064-CU-OE-CXC

Judge James J. Di Cesare

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: 07/27/2021 DAVID H. YAMASAKI, Clerk of the Court  
(Fecha)

Clerk, by Georgina Ramirez — Georgina Ramirez — , Deputy  
(Secretario) (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):

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Eduardo Garcia (State Bar #290572)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619) 599-8292  
Facsimile: (619) 599-8291  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)

Assigned for all Purposes  
Judge James J. Di Cesare

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619)255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)

C-1b

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

OMAR HAZNEDAR and PHILIP SOTO,  
individuals, on behalf of themselves and on  
behalf of all persons similarly situated,

Case No: 30-2021-01213064-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR:**

Plaintiffs,  
v.

NIKI INVESTMENTS, INC., a California  
Corporation; and DOES 1-50, Inclusive,

Defendants.

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

Plaintiffs Omar Haznedar and Philip Soto, individuals, (“PLAINTIFFS”), on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant NIKI INVESTMENTS, INC. (“DEFENDANT and/or DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates Domino’s franchises throughout California, including at the Orange County, California locations where PLAINTIFFS worked.

3. Plaintiff Haznedar was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from 2013 to May of 2020.

4. Plaintiff Soto has been employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from February 2020 to May 2021.

5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of the Complaint and ending on the

1 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in  
2 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
3 dollars (\$5,000,000.00).

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

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

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

1 other DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFFS  
2 and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result  
3 of the conduct of the DEFENDANTS' agents, servants and/or employees.

#### 4 **THE CONDUCT**

5 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
6 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time  
7 worked, meaning the time during which an employee is subject to the control of an employer,  
8 including all the time the employee is suffered or permitted to work. From time to time,  
9 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without  
10 paying them for all the time they were under DEFENDANTS' control. Specifically,  
11 PLAINTIFFS performed work before and after the beginning of her shift, spending time under  
12 DEFENDANTS' control for which they were not compensated, including time spent preparing  
13 the shop for opening. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members  
14 forfeited minimum wage and overtime compensation by regularly working without their time  
15 being accurately recorded and without compensation at the applicable minimum wage and  
16 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other  
17 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business  
18 records.

19 10. State law provides that employees must be paid overtime at one-and-one-half times  
20 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were  
21 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
22 employee's performance.

23 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS  
24 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
25 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their  
26 performance for DEFENDANTS. The non-discretionary incentive program provided all  
27 employees paid on an hourly basis with incentive compensation when the employees met the  
28 various performance goals set by DEFENDANTS. However, when calculating the regular rate

1 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,  
2 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular  
3 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the  
4 incentive program to potential and new employees as part of the compensation package. However,  
5 DEFENDANTS failed to include incentive compensation into the "regular rate of pay" for  
6 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by  
7 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the "regular rate  
8 of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation  
9 to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANTS.

10 12. As a result of their rigorous work schedules, PLAINTIFFS and other  
11 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks  
12 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and  
13 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal  
14 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS  
15 Members were required to perform work as ordered by DEFENDANTS for more than five (5)  
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
17 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period  
18 each workday in which these employees were required by DEFENDANTS to work ten (10) hours  
19 of work. DEFENDANTS' policy caused PLAINTIFFS and other CALIFORNIA CLASS  
20 Members to remain on-call and on-duty during what was supposed to be their off-duty meal  
21 periods. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal  
22 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate  
23 policy and practice.

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

1 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
2 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
3 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and  
4 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity  
5 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to  
6 remain on-duty and on-call and subject to DEFENDANTS' control in accordance with  
7 DEFENDANTS' policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not  
8 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and  
9 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed  
10 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and  
11 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
12 DEFENDANTS and DEFENDANTS' managers.

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

25 15. In violation of the applicable sections of the California Labor Code and the  
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
27 matter of company policy, practice and procedure, intentionally and knowingly failed to  
28 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time

1 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid  
2 the payment of the correct compensation as required by California law which allowed  
3 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied  
4 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
5 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

23 18. Aside from the violations listed herein, DEFENDANTS failed to issue to  
24 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
25 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section  
26 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFFS and  
27 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS failed to include  
28 items such as "Deposit Time" into the total hours worked, thereby violating Cal. Lab. Code §

1 226(a)(2). As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other  
2 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
3 226.

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

15 20. In the course of their employment, PLAINTIFFS and other CALIFORNIA CLASS  
16 Members as a business expense, were required by DEFENDANTS to use their own personal  
17 cellular phones as a result of and in furtherance of their job duties as employees for  
18 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost  
19 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,  
20 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to  
21 use their personal cell phones for work related issues. As a result, in the course of their  
22 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA  
23 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
24 related to the use of their personal cellular phones all on behalf of and for the benefit of  
25 DEFENDANTS.

26 21. By reason of this uniform conduct applicable to PLAINTIFFS and all  
27 CALIFORNIA CLASS Members, DEFENDANTS committed 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 in a company-wide policy and procedure which failed to accurately  
2 calculate and record the correct overtime rate for the overtime worked by PLAINTIFFS and other  
3 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour  
4 rates is the DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the  
5 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required  
6 overtime compensation for work performed by the members of the CALIFORNIA CLASS and  
7 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

8 22. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to  
9 take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.  
10 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five  
11 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed  
12 to provide PLAINTIFFS with a second off-duty meal period each workday in which they were  
13 required by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided  
14 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the  
15 rest break. DEFENDANTS’ policy caused PLAINTIFFS to remain on-call and on-duty during  
16 what was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and  
17 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict  
18 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFFS with a  
19 paystub that failed to accurately display PLAINTIFFS’ correct time worked and wages, as well  
20 as payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab.  
21 Code § 226(a). To date, DEFENDANTS have not fully paid Plaintiff Haznedar the overtime  
22 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.  
23 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of  
24 \$75,000.

25 **JURISDICTION AND VENUE**

26 23. This Court has jurisdiction over this Action pursuant to California Code of Civil  
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
28

1 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees  
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
4 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times  
5 maintained offices and facilities in this County and/or conduct substantial business in this County,  
6 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
7 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

8 **THE CALIFORNIA CLASS**

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

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

20 27. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
22 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
23 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal  
24 and rest breaks missed by PLAINTIFFS and the other members of the CALIFORNIA CLASS,  
25 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform  
26 this work and permitted or suffered to permit this work.

27 28. DEFENDANTS have the legal burden to establish that each and every  
28 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks

1 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and  
2 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS  
3 PERIOD and still fails to have in place a policy or practice to ensure that each and every  
4 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This  
5 common business practice applicable to each and every CALIFORNIA CLASS Member can be  
6 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &  
7 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not  
8 elements of this claim.

9 29. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
10 CLASS Members is impracticable.

11 30. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under  
12 California law by:

- 13 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
14 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
15 policies, practices and procedures that failed to pay all wages due the  
16 CALIFORNIA CLASS for all time worked;
- 17 b. Committing an act of unfair competition in violation of the California Unfair  
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
19 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
20 members;
- 21 c. Committing an act of unfair competition in violation of the California Unfair  
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.  
23 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS  
24 members with necessary expenses incurred in the discharge of their job duties; and
- 25 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
26 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
27 company policies, practices and procedures that uniformly and systematically  
28 failed to record and pay PLAINTIFFS and other members of the CALIFORNIA

1 CLASS for all time worked, including minimum wages owed and overtime wages  
2 owed for work performed by these employees.

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

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

8 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
9 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
10 uniformly to every member of the CALIFORNIA CLASS;

11 c. The claims of the representative PLAINTIFFS are typical of the claims of each  
12 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members  
13 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on  
14 an hourly basis who was subjected to the DEFENDANTS’ deceptive practice and  
15 policy which failed to provide the legally required meal and rest periods to the  
16 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
17 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic  
18 injury as a result of DEFENDANTS’ employment practices. PLAINTIFFS, like  
19 all the other members of the CALIFORNIA CLASS, were subjected to the uniform  
20 employment practices of DEFENDANTS and was a non-exempt employee paid  
21 on an hourly basis and paid additional non-discretionary incentive wages who was  
22 subjected to the DEFENDANTS’ practice and policy which failed to pay the  
23 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime  
24 worked by the CALIFORNIA CLASS and thereby systematically under pays  
25 overtime compensation to the CALIFORNIA CLASS. PLAINTIFFS and the  
26 members of the CALIFORNIA CLASS were and are similarly or identically  
27 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
28 misconduct engaged in by DEFENDANTS; and

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

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

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

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

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

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

26 i. With respect to the First Cause of Action, the final relief on behalf of the  
27 CALIFORNIA CLASS sought does not relate exclusively to restitution  
28 because through this claim PLAINTIFFS seek declaratory relief holding

1                   that the DEFENDANTS’ policy and practices constitute unfair  
2                   competition, along with declaratory relief, injunctive relief, and incidental  
3                   equitable relief as may be necessary to prevent and remedy the conduct  
4                   declared to constitute unfair competition;

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

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

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

19                         1. Inconsistent or varying adjudications with respect to individual  
20                         members of the CALIFORNIA CLASS, which would establish  
21                         incompatible standards of conduct for the DEFENDANTS; and/or;

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

27                  iii. In the context of wage litigation, because a substantial number of  
28                  individual CALIFORNIA CLASS Members will avoid asserting their legal

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rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

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

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’ employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and

1 in obtaining adequate compensation for the damages and injuries which  
2 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

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

15 34. DEFENDANTS maintain records from which the Court can ascertain and identify  
16 by job title each of DEFENDANTS' employees who as have been systematically, intentionally  
17 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein  
18 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles  
19 of similarly situated employees when they have been identified.

20 **THE CALIFORNIA LABOR SUB-CLASS**

21 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
22 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
23 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-  
24 CLASS") at any time during the period three (3) years prior to the filing of the original complaint  
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS  
26 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
27 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
28 (\$5,000,000.00).

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

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

18           38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
19 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 22           a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
23           compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
24           missed meal and rest breaks in violation of the California Labor Code and  
25           California regulations and the applicable California Wage Order;
- 26           b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members  
27           of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
28           thirty (30) minute meal breaks and rest periods;

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- c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS' conduct was willful.

40. DEFENDANTS 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 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-

1 duty, uninterrupted thirty (30) minute meal breaks and the legally required rest  
2 breaks;

- 3 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the  
4 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
5 statement in writing showing all accurate rates in effect during the pay period and  
6 the corresponding amount of time worked at each overtime rate by the employee;
- 7 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the  
8 CALIFORNIA CLASS members with necessary expenses incurred in the  
9 discharge of their job duties;
- 10 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
11 employee is discharged or quits from employment, the employer must pay the  
12 employee all wages due without abatement, by failing to tender full payment  
13 and/or restitution of wages owed or in the manner required by California law to  
14 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
15 their employment.

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

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

1 employees paid on an hourly basis and paid additional non-discretionary incentive  
2 wages who was subjected to the DEFENDANTS' practice and policy which failed  
3 to pay the correct rate of overtime wages and total amount of wages due to the  
4 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
5 as a result of DEFENDANTS' employment practices. PLAINTIFFS and the  
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
7 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern  
8 of misconduct engaged in by DEFENDANTS; and

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

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

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

23 i. Inconsistent or varying adjudications with respect to individual members  
24 of the CALIFORNIA LABOR SUB-CLASS which would establish  
25 incompatible standards of conduct for the parties opposing the  
26 CALIFORNIA LABOR SUB-CLASS; or

27 ii. Adjudication with respect to individual members of the CALIFORNIA  
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

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interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
  - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
    - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
    - 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter

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be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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- d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to  
22 engage in a business practice which violates California law, including but not limited to, the  
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
24 including Sections 201, 202, 203, 204, 206.5, 246, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,  
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant  
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

15           50. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,  
16 unfair and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFFS and the  
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
18 DEFENDANTS.

19           51. By the conduct alleged herein, DEFENDANTS’ practices were also unfair and  
20 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to provide  
21 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

22           52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each  
23 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
24 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
25 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
26 hours of work.

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1           53.     PLAINTIFFS further demand on behalf of themselves and on behalf of each  
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
3 not timely provided as required by law.

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

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

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

20          57.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from  
23 engaging in any unlawful and unfair business practices in the future.

24          58.     PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,  
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a  
27 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other  
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these  
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL**  
7 **DEFENDANTS)**

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

11 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
12 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
13 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately  
14 calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

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

27 65. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS  
2 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
3 pay.

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

10           67. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
11 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
12 the correct minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

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1           74.    PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code  
3 and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately  
4 calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the  
5 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS’ failure to properly compensate the  
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work  
7 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

18          78.    DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and  
19 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
20 amount of overtime worked and correct applicable overtime rate for the amount of overtime they  
21 worked. As set forth herein, DEFENDANTS’ uniform policy and practice was to unlawfully and  
22 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the  
23 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed  
24 to pay these employees the correct applicable overtime wages for all overtime worked.

25          79.    DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,  
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
27 of implementing a uniform policy and practice that denied accurate compensation to  
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all

1 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or  
2 forty (40) hours in any workweek.

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

9 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
11 full compensation for all overtime worked.

12 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
13 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS  
14 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFFS and  
15 the other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid  
16 collective bargaining agreement that would preclude the causes of action contained herein this  
17 Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the  
18 CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable,  
19 non-waivable rights provided by the State of California.

20 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the  
21 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than  
22 they were entitled to, constituting a failure to pay all earned wages.

23 84. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
25 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
26 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
27 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
28

1 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’S  
2 business records and witnessed by employees.

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

8 86. DEFENDANTS knew or should have known that PLAINTIFFS and the other  
9 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
10 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross  
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
12 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
13 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
14 overtime rate.

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

23 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
25 interest, statutory costs, as well as the assessment of any statutory penalties against  
26 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable  
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA  
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS’

1 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
2 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
3 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as  
4 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other  
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
10 **DEFENDANTS)**

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

14 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
15 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR  
16 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
17 the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
18 not prevent these employees from being relieved of all of their duties for the legally required off-  
19 duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other  
20 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
21 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide  
22 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal  
23 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.  
24 As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS  
25 therefore forfeited meal breaks without additional compensation and in accordance with  
26 DEFENDANTS' strict corporate policy and practice.

27 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a meal period, in accordance with the applicable Wage  
2 Order, one additional hour of compensation at each employee's regular rate of pay for each  
3 workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
11 **DEFENDANTS)**

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

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

28

1 95. DEFENDANTS further violated California Labor Code §§ 226.7 and the  
2 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR  
3 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable  
4 Wage Order, one additional hour of compensation at each employee’s regular rate of pay for each  
5 workday that rest period was not provided.

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

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

11 **(Cal. Lab. Code §§ 226 and 226.2)**

12 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
13 **DEFENDANTS)**

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

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

- 19 a. Gross wages earned;
- 20 b. Total hours worked by the employee, except for any employee whose  
21 compensation is solely based on a salary and who is exempt from payment of  
22 overtime under subdivision (a) of Section 515 or any applicable order of the  
23 Industrial Welfare Commission;
- 24 c. The number of piece rate units earned and any applicable piece rate if the employee  
25 is paid on a piece-rate basis;
- 26 d. All deductions, provided that all deductions made on written orders of the  
27 employee may be aggregated and shown as one item;
- 28 e. Net wages earned;

- 1 f. The inclusive dates of the period for which the employee is paid;
- 2 g. The name of the employee and his or her social security number, except that by
- 3 January 1, 2008, only the last four digits of his or her social security number or an
- 4 employee identification number other than a social security number may be shown
- 5 on the itemized statement;
- 6 h. The name and address of the legal entity that is the employer; and
- 7 i. All applicable hourly rates in effect during the pay period and the corresponding
- 8 number of hours worked at each hourly rate by the employee.

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

- 11 a. The total hours of compensable rest and recovery periods, the rate of
- 12 compensation, and the gross wages paid for those periods during the
- 13 pay period; and
- 14 b. The total hours of other nonproductive time, the rate of
- 15 compensation, and the gross wages paid for that time during the pay
- 16 period.

17 100. When DEFENDANTS did not accurately record PLAINTIFFS’ and other  
18 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also  
19 failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with  
20 complete and accurate wage statements which failed to show, among other things, the correct  
21 overtime rate, the correct number of hours worked, missed meal and rest periods, owed to  
22 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that  
23 every employer shall furnish each of his or her employees with an accurate itemized wage  
24 statement in writing showing, among other things, gross wages earned and all applicable hourly  
25 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
26 rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to  
27 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
28 Code 226 *et seq.* Specifically, DEFENDANTS failed to include items such as “Deposit Time”

1 into the total hours worked, thereby violating Cal. Lab. Code § 226(a)(2). As a result, from time  
2 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA  
3 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

15 **SEVENTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

20 102. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
22 paragraphs of this Complaint.

23 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

24  
25 An employer shall indemnify his or her employee for all necessary expenditures  
26 or losses incurred by the employee in direct consequence of the discharge of his  
27 or her duties, or of his or her obedience to the directions of the employer, even  
28

1           though unlawful, unless the employee, at the time of obeying the directions,  
2           believed them to be unlawful.

3           104.     At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by  
4 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
5 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
6 benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-  
7 CLASS members for expenses which included, but were not limited to, costs related to using their  
8 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,  
9 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to  
10 use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice  
11 and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
12 members for expenses resulting from using their personal cellular phones for DEFENDANTS  
13 within the course and scope of their employment for DEFENDANTS. These expenses were  
14 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'  
15 conduct to assert any waiver of this expectation. Although these expenses were necessary  
16 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,  
17 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA  
18 LABOR SUB-CLASS members for these expenses as an employer is required to do under the  
19 laws and regulations of California.

20           105.     PLAINTIFFS therefore demands reimbursement for expenditures or losses  
21 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their  
22 job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with  
23 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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

**(Alleged by Plaintiff Haznedar and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)**

106. Plaintiff Haznedar, 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.

107. 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.

108. 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.”

109. 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.

110. There was no definite term in Plaintiff Haznedar’s or any CALIFORNIA LABOR SUB-CLASS Members’ employment contract.

111. Cal. Lab. Code § 203 provides:

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

6 112. The employment of Plaintiff Haznedar and many CALIFORNIA LABOR SUB-  
7 CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these  
8 employees who missed meal and rest breaks, as required by law.

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

### 15 **NINTH CAUSE OF ACTION**

#### 16 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

18 **(Alleged by PLAINTIFF against all Defendants)**

19 114. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth  
20 herein, the prior paragraphs of this Complaint.

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

1           116. PLAINTIFFS, 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 during the time period of May 21, 2020 until  
6 the present (the "AGGRIEVED EMPLOYEES").

7           117. On May 21, 2021, PLAINTIFFS gave written notice by certified mail to the Labor  
8 and Workforce Development Agency (the "Agency") and the employer of the specific  
9 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
10 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
11 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
12 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
13 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
14 EMPLOYEES as herein defined.

15           118. The policies, acts and practices heretofore described were and are an unlawful  
16 business act or practice because DEFENDANTS (a) failed to properly record and pay  
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,  
18 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized  
19 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to  
20 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code  
21 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,  
22 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,  
23 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory  
24 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as  
25 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the  
26 State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED  
27 EMPLOYEES.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly  
3 and 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  
6 CLASS as 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  
10 withheld from compensation due to PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANT’S’ ill-gotten gains into a fluid fund  
13 for restitution of the sums incidental to DEFENDANTS’ violations due to  
14 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for minimum wages, overtime wages, unreimbursed expenses, and other  
21 compensation due to PLAINTIFFS and the other members of the CALIFORNIA  
22 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
23 CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
27 which a violation occurs and one hundred dollars (\$100) per member of the  
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

DATED: July 27, 2021

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lapuyade  
Attorney for Plaintiffs

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**DEMAND FOR A JURY TRIAL**

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

DATED: July 27, 2021

**JCL LAW FIRM, APC**

By:   
Jean-Claude Lapuyade  
Attorney for Plaintiffs

# **EXHIBIT 1**



3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Tel: 619-599-8292  
Fax: 619-599-8291  
Toll Free: 1-888-498-6999  
[www.jcl-lawfirm.com](http://www.jcl-lawfirm.com)  
Jean-Claude Lapuyade, Esq.  
jlapuyade@jcl-lawfirm.com

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May 21, 2021

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

**NIKI INVESTMENTS, INC.**  
c/o CT Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017  
***Via Certified Mail with Return Receipt No.***  
***7021 0350 0001 8165 1873***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

This office represents ONER HAZNEDAR (“Haznedar”) and PHILIP SOTO (“Soto”) (collectively “Plaintiffs”) and other aggrieved employees in a proposed class and representative action against NIKI INVESTMENTS, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiffs and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff Haznedar was employed by Defendant in California from 2013 to May of 2020. Plaintiff Soto was employed by Defendant in California from February of 2020 to May of 2021. Plaintiffs were paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendant failed to, among other things, provide Plaintiffs, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiffs, and (v) sets forth the illegal practices used by Defendant. Plaintiffs therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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

Very truly yours,  
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 Jackland K. Hom (State Bar #327243)  
3990 Old Town Avenue, Suite C204  
3 San Diego, CA 92110  
Telephone: (619)255-9047  
4 Facsimile: (858) 404-9203

5 **JCL LAW FIRM, APC**  
Jean-Claude Lapuyade (State Bar #248676)  
6 3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
7 Telephone: (619)599-8292  
8 Facsimile: (619) 599-8291

9 Attorneys for Plaintiffs

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

12 ONER HAZNEDAR and PHILIP SOTO,  
13 individuals, on behalf of themselves and on  
behalf of all persons similarly situated,

14 Plaintiffs,

15 v.

16 NIKI INVESTMENTS, INC., a California  
17 Corporation; and DOES 1-50, Inclusive,

18 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 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Oner Haznedar and Philip Soto, individuals, (“PLAINTIFFS”), on behalf of  
2 themselves and all other similarly situated current and former employees, allege on information  
3 and belief, except for their own acts and knowledge which are based on personal knowledge, the  
4 following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant NIKI INVESTMENTS, INC. (“DEFENDANT and/or  
7 DEFENDANTS”) is a California Corporation and at all relevant times mentioned herein  
8 conducted and continues to conduct substantial and regular business throughout California.

9 2. DEFENDANT operates Domino’s franchises throughout California, including at  
10 the Orange County, California locations where PLAINTIFFS worked.

11 3. Plaintiff Haznedar was employed by DEFENDANT in California as a non-exempt  
12 employee entitled to minimum wages, overtime pay and meal and rest periods from 2013 to May  
13 of 2020.

14 4. Plaintiff Soto was employed by DEFENDANT in California as a non-exempt  
15 employee entitled to minimum wages, overtime pay and meal and rest periods from February of  
16 2020 to May of 2021.

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

24 6. PLAINTIFFS bring this Class Action on behalf of themselves and a  
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses  
26 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy  
27 and practice which failed to lawfully compensate these employees for all their time worked.  
28 DEFENDANTS’ uniform policy and practice alleged herein is an unlawful, unfair and deceptive  
business practice whereby DEFENDANTS retained and continues to retain wages due to

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

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

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

23 **THE CONDUCT**

24 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
25 were required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time  
26 worked, meaning the time during which an employee is subject to the control of an employer,  
27 including all the time the employee is suffered or permitted to work. From time to time,  
28 DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work without

1 paying them for all the time they were under DEFENDANTS’ control. Specifically,  
2 PLAINTIFFS performed work before and after the beginning of their shift, spending time under  
3 DEFENDANTS’ control for which they were not compensated, including time spent preparing  
4 the shop for opening. Further, DEFENDANTS from time to time required PLAINTIFFS and  
5 CALIFORNIA CLASS Members to clock out at the end of their shifts and continue working to  
6 perform work-related tasks. As a result, the PLAINTIFFS and other CALIFORNIA CLASS  
7 Members forfeited minimum wage and overtime compensation by regularly working without their  
8 time being accurately recorded and without compensation at the applicable minimum wage and  
9 overtime rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFFS and other  
10 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business  
11 records.

12 10. State law provides that employees must be paid overtime at one-and-one-half times  
13 their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS Members were  
14 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
15 employee’s performance.

16 11. The second component of PLAINTIFFS’ and other CALIFORNIA CLASS  
17 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid  
18 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their  
19 performance for DEFENDANTS. The non-discretionary incentive program provided all  
20 employees paid on an hourly basis with incentive compensation when the employees met the  
21 various performance goals set by DEFENDANTS. However, when calculating the regular rate  
22 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,  
23 DEFENDANTS failed to include the incentive compensation as part of the employees’ “regular  
24 rate of pay” for purposes of calculating overtime pay. Management and supervisors described the  
25 incentive program to potential and new employees as part of the compensation package. However,  
26 DEFENDANTS failed to include incentive compensation into the “regular rate of pay” for  
27 purposes of calculating overtime pay. As a matter of law, the incentive compensation received by  
28 PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the “regular rate

1 of pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation  
2 to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANTS.

3 12. As a result of their rigorous work schedules, PLAINTIFFS and other  
4 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks  
5 and were not fully relieved of duty for meal periods. Specifically, PLAINTIFFS and  
6 CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal  
7 breaks to complete tasks for DEFENDANTS. PLAINTIFFS and other CALIFORNIA CLASS  
8 Members were required to perform work as ordered by DEFENDANTS for more than five (5)  
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
10 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period  
11 each workday in which these employees were required by DEFENDANTS to work ten (10) hours  
12 of work. DEFENDANTS’ policy caused PLAINTIFFS and other CALIFORNIA CLASS  
13 Members to remain on-call and on-duty during what was supposed to be their off-duty meal  
14 periods. PLAINTIFFS and the other CALIFORNIA CLASS Members therefore forfeited meal  
15 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate  
16 policy and practice.

17 13. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFFS and  
18 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
19 without being provided ten (10) minute rest periods. Further, these employees were denied their  
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
21 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
22 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
23 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
24 rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were often interrupted and  
25 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity  
26 to take their rest breaks, PLAINTIFFS and the CALIFORNIA CLASS Members were required to  
27 remain on-duty and on-call and subject to DEFENDANTS’ control in accordance with  
28 DEFENDANTS’ policy. PLAINTIFFS and other CALIFORNIA CLASS Members were also not

1 provided with one hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFFS and  
2 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed  
3 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFFS and  
4 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
5 DEFENDANTS and DEFENDANTS' managers.

6 14. Under California law, every employer shall pay to each employee, on the  
7 established payday for the period involved, not less than the applicable minimum wage for all  
8 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
9 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
10 during which an employee is subject to the control of an employer and includes all the time the  
11 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFFS and  
12 other CALIFORNIA CLASS Members were from time to time required to perform work for  
13 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal  
14 breaks. DEFENDANTS failed to compensate PLAINTIFFS and other CALIFORNIA CLASS  
15 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.  
16 As such, DEFENDANTS failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members  
17 the applicable minimum wage for all hours worked in a payroll period.

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

27 16. From time to time, when PLAINTIFFS and other CALIFORNIA CLASS  
28 Members worked during what was supposed to be their meal breaks or otherwise off the clock,

1 and/or when DEFENDANT miscalculated PLAINTIFFS’ and other CALIFORNIA CLASS  
2 Members’ regular rate of pay, DEFENDANTS also failed to provide PLAINTIFFS and the other  
3 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
4 to show, among other things, the correct time worked, including, work performed in excess of  
5 eight (8) hours in a workday and/or forty (40) hours in any workweek, and the gross wages paid  
6 for those periods during the pay period, and the correct penalty payments or missed meal and rest  
7 periods in violation of California Labor Code Sections 226 and 226.2.

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

16 18. Aside from the violations listed herein, DEFENDANTS failed to issue to  
17 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
18 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section  
19 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFFS and  
20 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS failed to include  
21 items such as “Deposit Time” into the total hours worked, thereby violating Cal. Lab. Code §  
22 226(a)(2). As a result, from time to time DEFENDANTS provided PLAINTIFFS and the other  
23 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code §  
24 226.

25 19. DEFENDANTS as a matter of corporate policy, practice and procedure,  
26 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS  
27 and the other CALIFORNIA CLASS Members for required business expenses incurred by the  
28 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers  
2 are required to indemnify employees for all expenses incurred in the course and scope of their  
3 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
7 to be unlawful."

8         20. In the course of their employment, PLAINTIFFS and other CALIFORNIA CLASS  
9 Members as a business expense, were required by DEFENDANTS to use their own personal  
10 cellular phones as a result of and in furtherance of their job duties as employees for  
11 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost  
12 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,  
13 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to  
14 use their personal cell phones for work related issues. As a result, in the course of their  
15 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA  
16 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
17 related to the use of their personal cellular phones all on behalf of and for the benefit of  
18 DEFENDANTS.

19         21. By reason of this uniform conduct applicable to PLAINTIFFS and all  
20 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in  
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
22 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately  
23 calculate and record the correct overtime rate for the overtime worked by PLAINTIFFS and other  
24 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour  
25 rates is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the  
26 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required  
27 overtime compensation for work performed by the members of the CALIFORNIA CLASS and  
28 violated the California Labor Code and regulations promulgated thereunder as herein alleged.



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

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

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

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

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

3           30.     DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under  
4 California law by:

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

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

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

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- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANTS’ deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS’ employment practices. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANTS and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS’ practice and policy which failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically under pays overtime compensation to the CALIFORNIA CLASS. PLAINTIFFS and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- d. The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

1           32. 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, statutory  
4 and other legal questions within the class format, prosecution of separate actions  
5 by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

19               i. With respect to the First Cause of Action, the final relief on behalf of the  
20 CALIFORNIA CLASS sought does not relate exclusively to restitution  
21 because through this claim PLAINTIFFS seek declaratory relief holding  
22 that the DEFENDANTS' policy and practices constitute unfair  
23 competition, along with declaratory relief, injunctive relief, and incidental  
24 equitable relief as may be necessary to prevent and remedy the conduct  
25 declared to constitute unfair competition;

26           c. Common questions of law and fact exist as to the members of the CALIFORNIA  
27 CLASS, with respect to the practices and violations of California law as listed  
28 above, and predominate over any question affecting only individual

1 CALIFORNIA CLASS Members, and a Class Action is superior to other available  
2 methods for the fair and efficient adjudication of the controversy, including  
3 consideration of:

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

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

12 1. Inconsistent or varying adjudications with respect to individual  
13 members of the CALIFORNIA CLASS, which would establish  
14 incompatible standards of conduct for the DEFENDANTS; and/or;

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

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

26 iv. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this litigation because class treatment will obviate  
28 the need for unduly and unnecessary duplicative litigation that is likely to

1 result in the absence of certification of this action pursuant to Cal. Code of  
2 Civ. Proc. § 382.

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

- 5 a. The questions of law and fact common to the CALIFORNIA CLASS predominate  
6 over any question affecting only individual CALIFORNIA CLASS Members  
7 because the DEFENDANTS' employment practices are uniform and  
8 systematically applied with respect to the CALIFORNIA CLASS.
- 9 b. A Class Action is superior to any other available method for the fair and efficient  
10 adjudication of the claims of the members of the CALIFORNIA CLASS because  
11 in the context of employment litigation a substantial number of individual  
12 CALIFORNIA CLASS Members will avoid asserting their rights individually out  
13 of fear of retaliation or adverse impact on their employment;
- 14 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical  
15 to bring all members of the CALIFORNIA CLASS before the Court;
- 16 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
17 obtain effective and economic legal redress unless the action is maintained as a  
18 Class Action;
- 19 e. There is a community of interest in obtaining appropriate legal and equitable relief  
20 for the acts of unfair competition, statutory violations and other improprieties, and  
21 in obtaining adequate compensation for the damages and injuries which  
22 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 23 f. There is a community of interest in ensuring that the combined assets of  
24 DEFENDANTS are sufficient to adequately compensate the members of the  
25 CALIFORNIA CLASS for the injuries sustained;
- 26 g. DEFENDANTS have acted or refused to act on grounds generally applicable to  
27 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
28 with respect to the CALIFORNIA CLASS as a whole;

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

7 34. DEFENDANTS maintain records from which the Court can ascertain and identify  
8 by job title each of DEFENDANTS' employees who as have been systematically, intentionally  
9 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein  
10 alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles  
11 of similarly situated employees when they have been identified.

12 **THE CALIFORNIA LABOR SUB-CLASS**

13 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and  
14 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
15 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-  
16 CLASS") at any time during the period three (3) years prior to the filing of the original complaint  
17 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS  
18 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
19 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
20 (\$5,000,000.00).

21 36. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
24 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time  
25 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
26 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the  
27 benefit of this work, required employees to perform this work and permitted or suffered to permit  
28 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-

1 CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
2 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
3 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR  
4 SUB-CLASS PERIOD should be adjusted accordingly.

5 37. DEFENDANTS maintain records from which the Court can ascertain and identify  
6 by name and job title, each of DEFENDANTS' employees who have been systematically,  
7 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and  
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any  
9 additional job titles of similarly situated employees when they have been identified.

10 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 14 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
15 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
16 missed meal and rest breaks in violation of the California Labor Code and  
17 California regulations and the applicable California Wage Order;
- 18 b. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members  
19 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
20 thirty (30) minute meal breaks and rest periods;
- 21 c. Whether DEFENDANTS failed to provide PLAINTIFFS and the other members  
22 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
23 statements;
- 24 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to  
25 members of the CALIFORNIA LABOR SUB-CLASS in violation of the  
26 California Labor Code and California regulations and the applicable California  
27 Wage Order;

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- e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to compensation for time worked, including overtime worked, under the overtime pay requirements of California law;
- f. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANTS’ conduct was willful.

40. DEFENDANTS 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 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;

- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABORSUB-CLASS, were non-exempt employees paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANTS' practice and policy which failed to pay the correct rate of overtime wages and total amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or

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

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

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

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

17 i. Inconsistent or varying adjudications with respect to individual members  
18 of the CALIFORNIA LABOR SUB-CLASS which would establish  
19 incompatible standards of conduct for the parties opposing the  
20 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

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

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

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

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

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

26 iii. In the context of wage litigation because a substantial number of individual  
27 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
28 legal rights out of fear of retaliation by DEFENDANTS, which may

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

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

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

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

14                  b. A Class Action is superior to any other available method for the fair and efficient  
15                  adjudication of the claims of the members of the CALIFORNIA LABOR SUB-  
16                  CLASS because in the context of employment litigation a substantial number of  
17                  individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
18                  their rights individually out of fear of retaliation or adverse impact on their  
19                  employment;

20                  c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
21                  it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS  
22                  before the Court;

23                  d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
24                  not be able to obtain effective and economic legal redress unless the action is  
25                  maintained as a Class Action;

26                  e. There is a community of interest in obtaining appropriate legal and equitable relief  
27                  for the acts of unfair competition, statutory violations and other improprieties, and  
28                  in obtaining adequate compensation for the damages and injuries which

1 DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-  
2 CLASS;

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

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

21 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

22 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
24 Complaint.

25 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
26 Code § 17021.

27 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SECOND CAUSE OF ACTION**

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

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

20 59. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
21 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
22 this Complaint.

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

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

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

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

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

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

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

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

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

28           69. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA

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

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

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

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

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**THIRD CAUSE OF ACTION**

**FAILURE TO PAY OVERTIME COMPENSATION  
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against ALL  
DEFENDANTS)**

73. PLAINTIFFS, 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.

74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

78. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed  
2 to pay these employees the correct applicable overtime wages for all overtime worked.

3 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
4 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
5 of implementing a uniform policy and practice that denied accurate compensation to  
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for all  
7 overtime worked, including, the work performed in excess of eight (8) hours in a workday and/or  
8 forty (40) hours in any workweek.

9 80. In committing these violations of the California Labor Code, DEFENDANTS  
10 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
11 consequently underpaid the actual time worked by PLAINTIFFS and other members of the  
12 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the  
13 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
14 Industrial Welfare Commission requirements and other applicable laws and regulations.

15 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
17 full compensation for all overtime worked.

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

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

84. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of  
the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in

1 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
2 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
3 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
4 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT'S  
5 business records and witnessed by employees.

6 85. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
7 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
8 CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA  
9 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts  
10 which are presently unknown to them and which will be ascertained according to proof at trial.

11 86. DEFENDANTS knew or should have known that PLAINTIFFS and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
13 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross  
14 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
15 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
overtime rate.

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

25 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
26 therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
27 interest, statutory costs, as well as the assessment of any statutory penalties against  
28 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable  
statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA

1 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS’  
2 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
3 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
4 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS’ conduct as  
5 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other  
6 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all  
DEFENDANTS)**

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

14 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
15 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR  
16 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
17 the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
18 not prevent these employees from being relieved of all of their duties for the legally required off-  
19 duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other  
20 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
21 DEFENDANTS for their meal periods. Additionally, DEFENDANTS’ failure to provide  
22 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal  
23 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS’ business records.  
24 As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS  
25 therefore forfeited meal breaks without additional compensation and in accordance with  
26 DEFENDANTS’ strict corporate policy and practice.

27 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a meal period, in accordance with the applicable Wage  
2 Order, one additional hour of compensation at each employee's regular rate of pay for each  
3 workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
11 **DEFENDANTS)**

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

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

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

1 Wage 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 96. As a proximate result of the aforementioned violations, PLAINTIFFS and  
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
5 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code §§ 226 and 226.2)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all  
10 DEFENDANTS)**

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

14 98. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
15 “accurate itemized” statement in writing showing:

- 16 a. Gross wages earned;
- 17 b. Total hours worked by the employee, except for any employee whose  
18 compensation is solely based on a salary and who is exempt from payment of  
19 overtime under subdivision (a) of Section 515 or any applicable order of the  
20 Industrial Welfare Commission;
- 21 c. The number of piece rate units earned and any applicable piece rate if the employee  
22 is paid on a piece-rate basis;
- 23 d. All deductions, provided that all deductions made on written orders of the  
24 employee may be aggregated and shown as one item;
- 25 e. Net wages earned;
- 26 f. The inclusive dates of the period for which the employee is paid;
- 27 g. The name of the employee and his or her social security number, except that by  
28 January 1, 2008, only the last four digits of his or her social security number or an

1 employee identification number other than a social security number may be shown  
2 on the itemized statement;

3 h. The name and address of the legal entity that is the employer; and

4 i. All applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

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

8 a. The total hours of compensable rest and recovery periods, the rate of  
9 compensation, and the gross wages paid for those periods during the  
10 pay period; and

11 b. The total hours of other nonproductive time, the rate of  
12 compensation, and the gross wages paid for that time during the pay  
13 period.

14 100. When DEFENDANTS did not accurately record PLAINTIFFS’ and other  
15 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also  
16 failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with  
17 complete and accurate wage statements which failed to show, among other things, the correct  
18 overtime rate, the correct number of hours worked, missed meal and rest periods, owed to  
19 PLAINTIFFS and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that  
20 every employer shall furnish each of his or her employees with an accurate itemized wage  
21 statement in writing showing, among other things, gross wages earned and all applicable hourly  
22 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
23 rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to  
24 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor  
25 Code 226 *et seq.* Specifically, DEFENDANTS failed to include items such as “Deposit Time”  
26 into the total hours worked, thereby violating Cal. Lab. Code § 226(a)(2). As a result, from time  
27 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA  
28 CLASS with wage statements which violated Cal. Lab. Code § 226.



1 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,  
2 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to  
3 use their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice  
4 and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
5 members for expenses resulting from using their personal cellular phones for DEFENDANTS  
6 within the course and scope of their employment for DEFENDANTS. These expenses were  
7 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'  
8 conduct to assert any waiver of this expectation. Although these expenses were necessary  
9 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,  
10 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA  
11 LABOR SUB-CLASS members for these expenses as an employer is required to do under the  
12 laws and regulations of California.

13 105. PLAINTIFFS therefore demands reimbursement for expenditures or losses  
14 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their  
15 job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with  
16 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN DUE**

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

20 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**  
21 **DEFENDANTS)**

22 106. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
24 paragraphs of this Complaint.

25 107. Cal. Lab. Code § 200 provides that:

26 As used in this article:(a) "Wages" includes all amounts for labor performed by  
27 employees of every description, whether the amount is fixed or ascertained by the  
28 standard of time, task, piece, Commission basis, or other method of calculation. (b)  
"Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
2 paid for is performed personally by the person demanding payment.

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

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

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

16 110. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR SUB-  
17 CLASS Members’ employment contract.

18 111. Cal. Lab. Code § 203 provides:

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

24 112. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-  
25 CLASS Members terminated and DEFENDANTS have not tendered payment of wages, to these  
26 employees who missed meal and rest breaks, as required by law.

27 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS  
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 CALIFORNIA LABOR SUB-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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**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
  - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
  - c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
  - d. Restitutionary disgorgement of DEFENDANT’S’ ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
  
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
  - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, unreimbursed expenses, and other compensation due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
  - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
  - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the

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CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197 and/or §2802.

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

**ZAKAY LAW GROUP, APLC**

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

Shani O. Zakay  
Attorney for Plaintiffs

**DEMAND FOR A JURY TRIAL**

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

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

**ZAKAY LAW GROUP, APLC**

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

Shani O. Zakay  
Attorney for Plaintiffs