

**SUMMONS
(CITACION JUDICIAL)**

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

LAUGH FACTORY, INC., a California Corporation; and DOES 1-50, Inclusive,

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

JOSALYN O'QUINN, individually, on behalf of herself and on behalf of all persons similarly situated,

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

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

AUG 13 2019

Sherrri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

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):

Los Angeles Superior Court, Stanely Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del caso) **19STCV28155**

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

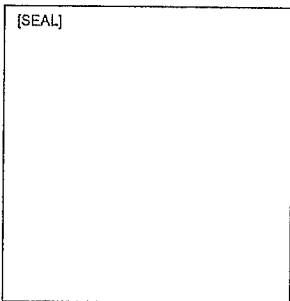
DATE: **AUG 13 2019**
(Fecha)

SHERRI R. CARTER

Clerk, by Isaac Lovo
(Secretario)

, Deputy
(Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

VIA FAX

1 **JCL LAW FIRM, APC**
2 Jean-Claude Lapuyade (State Bar #248676)
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Superior Court of California
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Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

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15 Attorneys for Plaintiff JOSALYN O'QUINN

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF LOS ANGELES**

18 JOSALYN O'QUINN, individually, on behalf
19 of herself and on behalf of all persons similarly
20 situated,

21 Plaintiff,

22 v.

23 LAUGH FACTORY, INC., a California
24 Corporation; and DOES 1-50, Inclusive,

25 Defendants.

Case No: **19STCV28155**

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;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 & 203

DEMAND FOR A JURY TRIAL

VIA FAX

1 Plaintiff JOSALYN O'QUINN ("PLAINTIFF"), individually, on behalf of herself and all
2 other similarly situated current and former employees, allege on information and belief, except
3 for her own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant LAUGH FACTORY INC. ("DEFENDANT") is a California limited
6 liability company and at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 2. DEFENDANT operates comedy club with a bar and a restaurant in Los Angeles
9 County, California.

10 3. PLAINTIFF was employed by DEFENDANT in California between February
11 2018 and March 2019 and has been at all times relevant mentioned herein classified as a non-
12 exempt employee paid in whole or in part on an hourly basis and has received additional
13 compensation from DEFENDANT in the form of non-discretionary incentive wages. Plaintiff is
14 entitled to overtime pay and meal and rest periods and payment of minimum and overtime wages.

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

21 5. PLAINTIFF brings this Class Action on behalf of themselves and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
23 the CALIFORNIA CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
24 which failed to lawfully compensate these employees for all their overtime worked.
25 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive
26 business practice whereby DEFENDANT retained and continues to retain wages due to
27 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
28 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

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

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

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

21 THE CONDUCT

22 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
23 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
24 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
25 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
26 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited minimum and
28 overtime wages due them by regularly working without their time being accurately recorded and

1 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
2 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
3 for all time worked is evidenced by DEFENDANT's business records.

4 9. State law provides that employees must be paid overtime at one-and-one-half times
5 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
6 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
7 employee's performance.

8 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
9 Members' compensation was DEFENDANT's non-discretionary incentive program in the form
10 of bonuses or tip distribution based on a percentage of gross sales, which paid the PLAINTIFF
11 and other CALIFORNIA CLASS Members additional wages based on their sales performance
12 for DEFENDANT. The non-discretionary incentive program provided additional wages based on
13 performance tips to all employees paid on an hourly basis, including PLAINTIFF. However, when
14 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
15 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as
16 part of the employees' "regular rate of pay" for purposes of calculating overtime pay. This
17 incentive program of distributing a fixed percentage of tips is common practice and set out in
18 company policy. As a matter of law, the incentive compensation received by PLAINTIFF and
19 other CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
20 to do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and
21 other CALIFORNIA CLASS Members by DEFENDANT. wages to other employees.

22 11. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
26 of pay for all overtime worked. This uniform policy and practice of DEFENDANT is intended to
27 purposefully avoid the payment of the correct overtime compensation as required by California
28 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over

1 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
2 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
3 be adjusted accordingly.

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

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

24 14. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
25 in the same pay period they earned incentive wages in the form of tips and/or missed meal and
26 rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
28 other things, the correct overtime rate for overtime worked, including, work performed in excess

1 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
2 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
3 shall furnish each of his or her employees with an accurate itemized wage statement in writing
4 showing, among other things, gross wages earned and all applicable hourly rates in effect during
5 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the
6 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
7 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
8 from time to time DEFENDANT provided PLAINTIFF and the other members of the
9 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

10 15. By reason of this uniform conduct applicable to PLAINTIFF and all
11 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
12 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
13 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
14 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
15 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour rates
16 is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the
17 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
18 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
19 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

20 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all of the legally
21 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
22 Code and failed to pay them all minimum and overtime wages due to them. DEFENDANT
23 provided compensation to her in the form of two components. One component of PLAINTIFF’s
24 compensation was a base hourly wage. The second component of PLAINTIFF’s compensation
25 were non-discretionary wages in the form of tips. PLAINTIFF earned the wages, so long as
26 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
27 DEFENDANT’s predefined eligibility performance requirements in various pay periods
28 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the

1 incentive wages. During these pay periods in which PLAINTIFF was paid the non-discretionary
2 incentive wages by DEFENDANT, PLAINTIFF also worked overtime for DEFENDANT, but
3 DEFENDANT never included the incentive compensation in PLAINTIFF's regular rate of pay
4 for the purposes of calculating what should have been PLAINTIFF's accurate overtime rate and
5 thereby underpaid PLAINTIFF for overtime worked throughout her employment with
6 DEFENDANT. The incentive compensation paid by DEFENDANT constituted wages within the
7 meaning of the California Labor Code and thereby should have been part of PLAINTIFF's
8 "regular rate of pay." PLAINTIFF was also from time to time unable to take off duty meal and
9 rest breaks and was not fully relieved of duty for her meal periods. PLAINTIFF was required to
10 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
11 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
12 second off-duty meal period from time to time in which she was required by DEFENDANT to
13 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without
14 additional compensation and in accordance with DEFENDANT's strict corporate policy and
15 practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
16 display PLAINTIFF's correct rates of overtime pay and payments for missed meal and rest
17 periods for certain pay periods in violation of Cal. Lab. Code § 226(a). The amount in controversy
18 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

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

13 21. The California Legislature has commanded that "all wages... ..earned by any
14 person in any employment are due and payable twice during each calendar month, on days
15 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
16 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
17 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
18 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
19 however, is statutorily authorized to "establish exemptions from the requirement that an overtime
20 rate of compensation be paid... ..for executive, administrative, and professional employees,
21 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
22 exemption, [and] customarily and regularly exercises discretion and independent judgment in
23 performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
24 of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS qualify for
25 exemption from the above requirements.

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

1 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly
2 calculate and record time worked by PLAINTIFF and the other members of the CALIFORNIA
3 CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to
4 perform this work and permitted or suffered to permit this overtime work.

5 23. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
6 CLASS Member is paid the applicable rate for all overtime worked and to accurately calculate
7 the “regular rate of pay” by including the incentive compensation that PLAINTIFF and members
8 of the CALIFORNIA CLASS were awarded by DEFENDANT. DEFENDANT, however, as a
9 matter of uniform and systematic policy and procedure failed to have in place during the
10 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that
11 each and every CALIFORNIA CLASS Member is paid the applicable overtime rate for all
12 overtime worked, so as to satisfy their burden. This common business practice applicable to each
13 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,
14 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
15 as causation, damages, and reliance are not elements of this claim.

16 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
17 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
18 employee for all time and overtime worked at the applicable rate, as required by California Labor
19 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
20 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
21 as to include all earnings in the overtime compensation calculation as required by California Labor
22 Code §§ 510, *et seq.*

23 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

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

- 27 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
28 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company

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policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all overtime worked, and failed to accurately record the applicable rates of all overtime worked by the CALIFORNIA CLASS;

- b. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees; and,
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and

27. The 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 CLASS are so numerous that the joinder of all such persons 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 CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was subjected to the uniform employment practices of DEFENDANT and was a non-exempt employee paid on an hourly basis and paid additional non-discretionary incentive wages who was subjected to the DEFENDANT's practice and policy which failed to pay for all time work and failed to pay the correct rate of overtime wages due to the CALIFORNIA CLASS

1 for all overtime worked by the CALIFORNIA CLASS and thereby systematically
2 under pays the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as
3 a result of DEFENDANT's employment practices. PLAINTIFF and the members
4 of the CALIFORNIA CLASS were and are similarly or identically harmed by the
5 same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in
6 by DEFENDANT; and

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

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

- 16 a. Without class certification and determination of declaratory, injunctive, statutory
17 and other legal questions within the class format, prosecution of separate actions
18 by individual members of the CALIFORNIA CLASS will create the risk of:
- 19 i. Inconsistent or varying adjudications with respect to individual members
20 of the CALIFORNIA CLASS which would establish incompatible
21 standards of conduct for the parties opposing the CALIFORNIA CLASS;
22 and/or;
 - 23 ii. Adjudication with respect to individual members of the CALIFORNIA
24 CLASS which would as a practical matter be dispositive of interests of the
25 other members not party to the adjudication or substantially impair or
26 impede their ability to protect their interests.
- 27 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
28 grounds generally applicable to the CALIFORNIA CLASS, making appropriate

1 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
2 DEFENDANT uniformly failed to pay all wages due, including the correct
3 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
4 as required by law;

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

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

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

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

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

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS.

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

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2 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh
3 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
4 CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
5 time during the period three (3) years prior to the filing of the complaint and ending on the date
6 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
7 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
8 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

21 33. DEFENDANT maintains records from which the Court can ascertain and identify
22 by name and job title, each of DEFENDANT's employees who have been systematically,
23 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
24 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
25 additional job titles of similarly situated employees when they have been identified.

26 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
27 CALIFORNIA LABOR SUB-CLASS Members is impracticable
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1 35. Common questions of law and fact exist as to members of the CALIFORNIA
2 LABOR SUB-CLASS, including, but not limited, to the following:

- 3 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
4 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
5 violation of the California Labor Code and California regulations and the
6 applicable California Wage Order;
- 7 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
8 overtime compensation for overtime worked under the overtime pay requirements
9 of California law;
- 10 c. Whether DEFENDANT failed to accurately record the applicable overtime rates
11 for all overtime worked by PLAINTIFF and the other members of the
12 CALIFORNIA LABOR SUB-CLASS;
- 13 d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
14 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
15 thirty (30) minute meal breaks and rest periods;
- 16 e. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
17 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
18 statements;
- 19 f. Whether DEFENDANT has engaged in unfair competition by the above-listed
20 conduct;
- 21 g. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and
- 23 h. Whether DEFENDANT's conduct was willful.

24 36. DEFENDANT, as a matter of company policy, practice and procedure, failed to
25 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
26 Members and failed to provide accurate records of the applicable overtime rates for the overtime
27 worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members,
28 including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by

1 DEFENDANT according to uniform and systematic company procedures as alleged herein
2 above. This business practice was uniformly applied to each and every member of the
3 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
4 adjudicated on a class-wide basis.

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

- 7 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
8 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
9 pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194 & §
10 1198;
- 11 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
12 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
13 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
14 Lab. Code §§ 1194 and 1197;
- 15 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
16 the other members of the CALIFORNIA CLASS with all legally required off-duty,
17 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 18 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
20 statement in writing showing all accurate and applicable overtime rates in effect
21 during the pay period and the corresponding amount of time worked at each
22 overtime rate by the employee;
- 23 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
24 employee is discharged or quits from employment, the employer must pay the
25 employee all wages due without abatement, by failing to tender full payment
26 and/or restitution of wages owed or in the manner required by California law to
27 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
28 their employment.

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

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

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

11 c. The claims of the representative PLAINTIFF are typical of the claims of each
12 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
13 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
14 employee paid on an hourly basis and paid additional non-discretionary incentive
15 wages who was subjected to the DEFENDANT's practice and policy which failed
16 to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-
17 CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result
18 of DEFENDANT's employment practices. PLAINTIFF and the members of the
19 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANT; and

22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
24 who are competent and experienced in Class Action litigation. There are no
25 material conflicts between the claims of the representative PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS that would make class
27 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
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1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
2 Members.

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

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

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA LABOR SUB-CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

- 3 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
4 in individually controlling the prosecution or defense of separate actions in
5 that the substantial expense of individual actions will be avoided to recover
6 the relatively small amount of economic losses sustained by the individual
7 CALIFORNIA LABOR SUB-CLASS Members when compared to the
8 substantial expense and burden of individual prosecution of this litigation;
- 9 ii. Class certification will obviate the need for unduly duplicative litigation
10 that would create the risk of:
- 11 1. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS, which
13 would establish incompatible standards of conduct for the
14 DEFENDANT; and/or,
- 15 2. Adjudications with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS would as a practical matter
17 be dispositive of the interests of the other members not parties to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests;
- 20 iii. In the context of wage litigation because a substantial number of individual
21 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
22 legal rights out of fear of retaliation by DEFENDANT, which may
23 adversely affect an individual's job with DEFENDANT or with a
24 subsequent employer, the Class Action is the only means to assert their
25 claims through 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 40. This 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 LABOR SUB-
6 CLASS predominate over any question affecting only individual CALIFORNIA
7 LABOR SUB-CLASS Members;
- 8 b. A Class Action is superior to any other available method for the fair and efficient
9 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
10 CLASS because in the context of employment litigation a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
12 their rights individually out of fear of retaliation or adverse impact on their
13 employment;
- 14 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
15 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
16 before the Court;
- 17 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
18 not be able to obtain effective and economic legal redress unless the action is
19 maintained as a Class Action;
- 20 e. There is a community of interest in obtaining appropriate legal and equitable relief
21 for the acts of unfair competition, statutory violations and other improprieties, and
22 in obtaining adequate compensation for the damages and injuries which
23 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
24 CLASS;
- 25 f. There is a community of interest in ensuring that the combined assets of
26 DEFENDANT are sufficient to adequately compensate the members of the
27 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

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14 **FIRST CAUSE OF ACTION**

15 **UNLAWFUL BUSINESS PRACTICES**

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

17 (Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)

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

21 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
22 Code § 17021.

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

27 Any person who engages, has engaged, or proposes to engage in unfair competition may
28 be enjoined in any court of competent jurisdiction. The court may make such orders or
judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition, as

1 defined in this chapter, or as may be necessary to restore to any person in interest any
2 money or property, real or personal, which may have been acquired by means of such
3 unfair competition. (Cal. Bus. & Prof. Code § 17203).

4 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
7 including Sections 204, 206.5, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
8 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
9 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
10 competition, including restitution of wages wrongfully withheld.

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

16 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
18 other members of the CALIFORNIA CLASS, minimum and overtime wages, failed to accurately
19 to record the applicable rate of all overtime worked, and failed to provide the required amount of
20 overtime compensation due to a systematic miscalculation of the overtime rate that cannot be
21 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
22 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
23 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
24 restitution of wages wrongfully withheld.

25 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 48. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

9 50. PLAINTIFF further demands on behalf of herself and on behalf of each
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
11 not timely provided as required by law.

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

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

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
16 **DEFENDANT)**

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

20 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
22 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
23 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

26 59. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a wage less than
28 the minimum so fixed is unlawful.

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

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

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

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

19 64. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
21 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

26 75. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
28 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
As set forth herein, DEFENDANT's 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 DEFENDANT in fact failed to
2 pay these employees the correct applicable overtime wages for all overtime worked.

3 76. DEFENDANT's 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 PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
7 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
8 in any workweek.

9 77. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
11 consequently underpaid the actual time worked by PLAINTIFF and other members of the
12 CALIFORNIA LABOR SUB-CLASS. DEFENDANT 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 78. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
17 full compensation for all overtime worked.

18 79. 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 PLAINTIFF
20 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
22 bargaining agreement that would preclude the causes of action contained herein this Complaint.
23 Rather, PLAINTIFF brings this Action on behalf of themselves and the CALIFORNIA LABOR
24 SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights
25 provided by the State of California.

26 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF 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.

81. DEFENDANT failed to accurately pay PLAINTIFF 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 PLAINTIFF 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 82. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
7 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
9 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
10 presently unknown to them and which will be ascertained according to proof at trial.

11 83. DEFENDANT knew or should have known that PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
13 worked. DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
17 overtime rate.

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

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

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

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against
DEFENDANT)**

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

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

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

6 89. As a proximate result of the aforementioned violations, PLAINTIFF 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
10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

12 (b) (Cal. Lab. Code §§ 226.7 & 512)

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
14 **DEFENDANT)**

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

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

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

1 CLASS Members who were not provided a rest 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 rest period was not provided.

4 93. As a proximate result of the aforementioned violations, PLAINTIFF 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
8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

10 **(Cal. Lab. Code § 226)**

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
12 **against DEFENDANT)**

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

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

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

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

8 96. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime
9 in the same pay period they earned incentive wages and/or missed meal and rest breaks,
10 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
11 CLASS with complete and accurate wage statements which failed to show, among other things,
12 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)
13 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or
14 missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish
15 each of his or her employees with an accurate itemized wage statement in writing showing, among
16 other things, gross wages earned and all applicable hourly rates in effect during the pay period
17 and the corresponding amount of time worked at each hourly rate. Aside from the violations listed
18 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
19 that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to
20 time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS
21 with wage statements which violated Cal. Lab. Code § 226.

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

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

5
6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

14 99. Cal. Lab. Code § 200 provides that:

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

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

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

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

1 102. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-
2 CLASS Members' employment contract.

3 103. Cal. Lab. Code § 203 provides:

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

9 104. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
10 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
11 employees who actually worked overtime, as required by law.

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF pray for a judgment against DEFENDANT, jointly and
20 severally, as follows:

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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


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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 and/or §1197.

DATED: August 12, 2019

JCL LAW FIRM, APC

By: 


Jean-Claude Lapuyade
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

DATED: August 12, 2019

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for Plaintiff