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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 TYLER CRUM, an individual, on behalf  
14 of himself and on behalf of all persons  
15 similarly situated,

16 Plaintiff,

17 vs.

18 S&D CARWASH MANAGEMENT,  
19 LLC, a Limited Liability Company; and  
20 Does 1 through 50, Inclusive,

21 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

**DEMAND FOR A JURY TRIAL**

**FILED**  
**Superior Court of California,**  
**Sacramento**  
**02/26/2019**  
**amocanu**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2019-00251338**

**BY FAX**

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

4  
5 **THE PARTIES**

6 1. Defendant S&D Carwash Management, LLC ("DEFENDANT") is a Limited  
7 Liability Company that at all relevant times mentioned herein conducted and continues to  
8 conduct substantial and regular business throughout California.

9 2. DEFENDANT is a company that provides exterior car washes. DEFENDANT  
10 is based in Roseville, California. In 2008, Quick Quack Car Wash was listed on Inc.  
11 Magazine's fastest growing companies.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt  
13 employee entitled to overtime pay and meal and rest periods from July of 2017 to September  
14 14, 2018. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT  
15 as a non-exempt employee paid in whole or in part on an hourly basis and received additional  
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

17 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
18 defined as all individuals who are or previously were employed by DEFENDANT in California  
19 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
20 period beginning on the date four (4) years prior to the filing of this Complaint and ending on  
21 the 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 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice  
27 which failed to lawfully compensate these employees for all their overtime worked.

1 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive  
2 business practice whereby DEFENDANT retained and continues to retain wages due  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
5 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and  
7 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

25  
26 **THE CONDUCT**

27 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
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1 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
2 CLASS for their overtime worked and the correct rate for missed meal premiums.  
3 DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for overtime  
4 worked and missed meal premiums owed to PLAINTIFF and other members of the  
5 CALIFORNIA CLASS in order to avoid paying these employees the correct overtime and meal  
6 premium compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA  
7 CLASS forfeited wages due them for working overtime and missing meal periods without  
8 compensation at the correct overtime and meal premium rates. DEFENDANT's uniform policy  
9 and practice to not pay the members of the CALIFORNIA CLASS the correct overtime rate for  
10 all overtime worked and correct meal premium pay for missed meal periods in accordance with  
11 applicable law is evidenced by DEFENDANT's business records.

12 9. State law provides that employees must be paid overtime and meal break  
13 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other  
14 CALIFORNIA CLASS Members were compensated at an hourly rate plus various incentive pay  
15 that was tied to specific elements of an employee's performance.

16 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
17 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
18 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
19 performance for DEFENDANT. 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 DEFENDANT. However, when calculating the regular rate  
22 of pay in order to pay overtime and missed meal premiums to PLAINTIFF and other  
23 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation  
24 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and  
25 missed meal premium pay. Management and supervisors described the incentive program to  
26 potential and new employees as part of the compensation package. As a matter of law, the  
27 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members  
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1 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic  
2 underpayment of overtime compensation and meal premium pay to PLAINTIFF and other  
3 CALIFORNIA CLASS Members by DEFENDANT. This uniform policy and practice of  
4 DEFENDANT was intended to purposefully avoid the payment of the correct overtime  
5 compensation as required by California law and the Fair Labor Standards Act which allowed  
6 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
7 with the law.

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

19 12. As a result of their rigorous work schedules, PLAINTIFF and other  
20 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks  
21 and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA  
22 CLASS Members were required to perform work as ordered by DEFENDANT for more than  
23 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT  
24 failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty  
25 meal period from time to time in which these employees were required by DEFENDANT to  
26 work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA CLASS Members  
27 therefore forfeited meal breaks without the correct meal premium compensation and in  
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1 accordance with DEFENDANT's strict corporate policy and practice.

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

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

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

11 16. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to  
12 him in the form of two components. One component of PLAINTIFF's compensation was a  
13 base hourly wage. The second component of PLAINTIFF's compensation were non-  
14 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF  
15 met certain predefined performance requirements. PLAINTIFF met DEFENDANT's  
16 predefined eligibility performance requirements in various pay periods throughout his  
17 employment with DEFENDANT and DEFENDANT paid PLAINTIFF the incentive wages.  
18 During these pay periods in which PLAINTIFF was paid the non-discretionary incentive wages  
19 by DEFENDANT, PLAINTIFF also worked overtime and/or was paid meal premiums for meal  
20 period violations by DEFENDANT, but DEFENDANT never included the incentive  
21 compensation in PLAINTIFF's regular rate of pay for the purposes of calculating what should  
22 have been PLAINTIFF's accurate overtime rate and/or accurate meal premium rate and thereby  
23 underpaid PLAINTIFF for overtime worked and meal period violations throughout his  
24 employment with DEFENDANT. The incentive compensation paid by DEFENDANT  
25 constituted wages within the meaning of the California Labor Code and thereby should have  
26 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time  
27 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal  
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1 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than  
2 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT  
3 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which  
4 he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore  
5 forfeited meal and rest breaks without the correct premium compensation and in accordance  
6 with DEFENDANT's strict corporate policy and practice. DEFENDANT also provided  
7 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of  
8 overtime pay and payments for missed meal and rest periods for certain pay periods in violation  
9 of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the  
10 overtime compensation still owed to him or any penalty wages owed to him under Cal. Lab.  
11 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum  
12 or value of \$75,000.

#### 13 14 JURISDICTION AND VENUE

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

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

#### 24 25 THE CALIFORNIA CLASS

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

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

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

24 22. DEFENDANT, as a matter of company policy, practice and procedure, and in  
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
27 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly  
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1 calculate and record overtime compensation for overtime worked and meal premium pay for  
2 meal period violations by PLAINTIFF and the other members of the CALIFORNIA CLASS,  
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform  
4 this work and permitted or suffered to permit this work.

5 23. DEFENDANT has the legal burden to establish that each and every  
6 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and meal  
7 premium pay and to accurately calculate the "regular rate of pay" by including the incentive  
8 compensation that PLAINTIFF and members of the CALIFORNIA CLASS were awarded by  
9 DEFENDANT. DEFENDANT, however, as a matter of uniform and systematic policy and  
10 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to  
11 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member  
12 is paid the applicable overtime rate for all overtime worked and the correct meal premium pay  
13 for all meal period violations, so as to satisfy their burden. This common business practice  
14 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-  
15 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§  
16 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

17 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
18 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
19 employee for all overtime worked at the applicable rate, as required by California Labor Code  
20 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the  
21 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to  
22 compensate the employee for applicable meal premium rate, as required by California Labor  
23 Code Section 512 and Section 226.7. At no time during the CALIFORNIA CLASS PERIOD  
24 was the overtime compensation for any member of the CALIFORNIA CLASS properly  
25 recalculated so as to include all earnings in the overtime compensation calculation as required  
26 by California Labor Code §§ 510, *et seq.*

27 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
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1 CLASS Members is impracticable.

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

4 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code  
5 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in  
6 place company policies, practices and procedures that failed to pay all  
7 wages due the CALIFORNIA CLASS for all overtime worked, and failed  
8 to accurately record the applicable rates of all overtime worked by the  
9 CALIFORNIA CLASS;

10 (b) Committing an act of unfair competition in violation of the California  
11 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
12 unlawfully, unfairly, and/or deceptively having in place a company policy,  
13 practice and procedure that failed to correctly calculate overtime  
14 compensation due to PLAINTIFF and the members of the CALIFORNIA  
15 CLASS;

16 (c) Committing an act of unfair competition in violation of the California  
17 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
18 failing to provide mandatory meal and/or rest break premium pay to  
19 PLAINTIFF and the CALIFORNIA CLASS members; and,

20 (d) Committing an act of unfair competition in violation of the California  
21 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
22 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et*  
23 *seq.*, by failing to pay the correct federal overtime wages to the  
24 PLAINTIFF and the members of the CALIFORNIA CLASS as legally  
25 required by the FLSA, and retaining the unpaid federal overtime to the  
26 benefit of DEFENDANT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
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1 impractical to bring all members of the CALIFORNIA CLASS before the  
2 Court;

3 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be  
4 able to obtain effective and economic legal redress unless the action is  
5 maintained as a Class Action;

6 (e) There is a community of interest in obtaining appropriate legal and  
7 equitable relief for the acts of unfair competition, statutory violations and  
8 other improprieties, and in obtaining adequate compensation for the  
9 damages and injuries which DEFENDANT's actions have inflicted upon  
10 the CALIFORNIA CLASS;

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

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

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

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

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



**THE CALIFORNIA LABOR SUB-CLASS**

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

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime compensation for the overtime worked and failed to correctly calculate meal premium pay for meal period violations suffered by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

33. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who 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.

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

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  
4 overtime compensation to members of the CALIFORNIA LABOR SUB-  
5 CLASS in violation of the California Labor Code and California  
6 regulations and the applicable California Wage Order;
- 7           (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
8 entitled to overtime compensation for overtime worked under the overtime  
9 pay requirements of California law;
- 10          (c) Whether DEFENDANT failed to accurately record the applicable  
11 overtime rates for all overtime worked PLAINTIFF and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS;
- 13          (d) Whether DEFENDANT failed to provide PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS with legally  
15 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 16          (e) Whether DEFENDANT failed to provide PLAINTIFF and the other  
17 members of the CALIFORNIA LABOR SUB-CLASS with accurate  
18 itemized wage statements;
- 19          (f) Whether DEFENDANT has engaged in unfair competition by the  
20 above-listed 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 violated the rights of the CALIFORNIA LABOR SUB-CLASS  
25 under California law by:

- 26           (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay  
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-  
28

1 CLASS the correct overtime pay for which DEFENDANT is liable  
2 pursuant to Cal. Lab. Code § 1194 & § 1198;

3 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
4 PLAINTIFF and the other members of the CALIFORNIA CLASS with  
5 all the correct pay for meal period violations and the legally required rest  
6 breaks;

7 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate  
9 itemized statement in writing showing all accurate and applicable  
10 overtime rates in effect during the pay period and the corresponding  
11 amount of time worked at each overtime rate by the employee; and,

12 (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
13 when an employee is discharged or quits from employment, the employer  
14 must pay the employee all wages due without abatement, by failing to  
15 tender full payment and/or restitution of wages owed or in the manner  
16 required by California law to the members of the CALIFORNIA LABOR  
17 SUB-CLASS who have terminated their employment.

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

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

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

1 (c) The claims of the representative PLAINTIFF are typical of the claims of  
2 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,  
3 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
4 was a non-exempt employee paid on an hourly basis and paid additional  
5 non-discretionary incentive wages who was subjected to the  
6 DEFENDANT's practice and policy which failed to pay the correct rate  
7 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for  
8 all overtime worked. PLAINTIFF sustained economic injury as a result  
9 of DEFENDANT's employment practices. PLAINTIFF and the members  
10 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
11 identically harmed by the same unlawful, deceptive, unfair and pervasive  
12 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

27 1) Inconsistent or varying adjudications with respect to individual  
28

1 members of the CALIFORNIA LABOR SUB-CLASS which  
2 would establish incompatible standards of conduct for the parties  
3 opposing the CALIFORNIA LABOR SUB-CLASS; or,

4 2) Adjudication with respect to individual members of the  
5 CALIFORNIA LABOR SUB-CLASS which would as a practical  
6 matter be dispositive of interests of the other members not party to  
7 the adjudication or substantially impair or impede their ability to  
8 protect their interests.

9 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
10 or refused to act on grounds generally applicable to the CALIFORNIA  
11 LABOR SUB-CLASS, making appropriate class-wide relief with respect  
12 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
13 DEFENDANT uniformly failed to pay all wages due. Including the  
14 correct overtime rate, for all overtime worked by the members of the  
15 CALIFORNIA LABOR SUB-CLASS as required by law;

16 (c) Common questions of law and fact predominate as to the members of the  
17 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
18 violations of California Law as listed above, and predominate over any  
19 question affecting only individual CALIFORNIA LABOR SUB-CLASS  
20 Members, and a Class Action is superior to other available methods for  
21 the fair and efficient adjudication of the controversy, including  
22 consideration of:

23 1) The interests of the members of the CALIFORNIA LABOR SUB-  
24 CLASS in individually controlling the prosecution or defense of  
25 separate actions in that the substantial expense of individual  
26 actions will be avoided to recover the relatively small amount of  
27 economic losses sustained by the individual CALIFORNIA  
28

LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-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;

3) 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 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,

4) 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.

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
2 ascertainable from the business records of DEFENDANT. The  
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
4 CLASS Members classified as non-exempt employees during the  
5 CALIFORNIA LABOR SUB-CLASS PERIOD; and,  
6 (i) Class treatment provides manageable judicial treatment calculated to bring  
7 a efficient and rapid conclusion to all litigation of all wage and hour  
8 related claims arising out of the conduct of DEFENDANT as to the  
9 members of the CALIFORNIA LABOR SUB-CLASS.

10  
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

18 41. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
19 Code § 17021.

20 42. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines  
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
23 competition as follows:

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



1 Cal. Bus. & Prof. Code § 17203.

2 43. By the conduct alleged herein, DEFENDANT has engaged and continues to  
3 engage in a business practice which violates California law, including but not limited to, the  
4 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
5 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1198, and Fair Labor Standards Act  
6 ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, for which this Court should issue declaratory and other  
7 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and  
8 remedy the conduct held to constitute unfair competition, including restitution of wages  
9 wrongfully withheld.

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

16 45. 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, wages due for overtime worked, failed to  
19 accurately to record the applicable rate of all overtime worked, and failed to provide the  
20 required amount of overtime compensation due to a systematic miscalculation of the overtime  
21 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
22 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
23 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,  
24 including restitution of wages wrongfully withheld.

25 46. 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

1 DEFENDANT.

2 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
3 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
4 the correct meal period premiums for meal period violations and failed to provide mandatory  
5 rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

11 49. PLAINTIFF further demands on behalf of himself and on behalf of each  
12 CALIFORNIA CLASS member, one (1) hour at their regular rate of pay for each workday in  
13 which an off duty paid rest period was not timely provided as required by law.

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

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

25 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
26 and do, seek such relief as may be necessary to restore to them the money and property which  
27 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
28

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
2 unfair business practices, including earned but unpaid wages for all overtime worked.

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

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

14  
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

17 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

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

20 55. PLAINTIFF, 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  
22 of this Complaint.

23 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
26 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other  
27 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly

1 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,  
2 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in  
3 any workweek.

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

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

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

14 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
15 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
16 amount of overtime worked and correct applicable overtime rate for the amount of overtime  
17 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to  
18 unlawfully and intentionally deny timely payment of wages due for the overtime worked by  
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
20 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for  
21 all overtime worked.

22 61. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
23 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a  
24 result of implementing a uniform policy and practice that denied accurate compensation to  
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all  
26 overtime worked, including, the work performed in excess of eight (8) hours in a workday  
27 and/or forty (40) hours in any workweek.

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

7           63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
9 receive full compensation for all overtime worked.

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

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

21          66. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
22 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194  
24 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
26 to accurately record and pay using the applicable overtime rate as evidenced by  
27 DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

7  
8 **THIRD CAUSE OF ACTION**

9 **For Failure to Provide Required Meal Period Premium Pay**

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

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

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

16 72. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT  
17 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
18 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
19 Labor Code. In these pay periods where DEFENDANT failed to provide PLAINTIFF and other  
20 CALIFORNIA LABOR SUB-CLASS Members with lawfully compliant meal periods,  
21 DEFENDANT also failed to provide these workers with meal period premium pay at the correct  
22 rate that included all of these employees' non-discretionary incentive wages earned in the same  
23 pay period. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR  
24 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
25 duties for the legally required off-duty meal periods. As a result of their rigorous work  
26 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often  
27 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,

1 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
2 Members with legally required meal premium pay at the correct rate is evidenced by  
3 DEFENDANT's business records. As a result, PLAINTIFF and other members of the  
4 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal break premium pay without in  
5 accordance with DEFENDANT's strict corporate policy and practice.

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

11 74. As a proximate result of the aforementioned violations, PLAINTIFF and  
12 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
13 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
14 suit.

15  
16 **FOURTH CAUSE OF ACTION**

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

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

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

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

24 76. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
25 time to time required to work in excess of four (4) hours without being provided ten (10) minute  
26 rest periods. Further, these employees were denied their first rest periods of at least ten (10)  
27 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest



1 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
2 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of  
3 ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
4 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
5 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were  
6 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

7 77. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
8 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-  
9 CLASS Members who were not provided a rest period, in accordance with the applicable Wage  
10 Order, one additional hour of compensation at each employee's regular rate of pay for each  
11 workday that rest period was not provided.

12 78. As a proximate result of the aforementioned violations, PLAINTIFF and  
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
14 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
15 suit.

#### 16 17 **FIFTH CAUSE OF ACTION**

#### 18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

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

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

25 80. Cal. Labor Code § 226 provides that an employer must furnish employees with  
26 an "accurate itemized" statement in writing showing:

27 (1) gross wages earned,

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

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

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

9 (5) net wages earned,

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

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

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

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

18 81. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
19 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
20 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
21 CLASS with complete and accurate wage statements which failed to show, among other things,  
22 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)  
23 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments  
24 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall  
25 furnish each of his or her employees with an accurate itemized wage statement in writing  
26 showing, among other things, gross wages earned and all applicable hourly rates in effect during  
27 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from

1 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an  
2 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
3 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of  
4 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

16  
17 **SIXTH CAUSE OF ACTION**

18 **For Failure to Pay Wages When Due**

19 **[ Cal. Lab. Code §§ 201, 202, 203]**

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

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

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

26 As used in this article:

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

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

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

6 86. 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  
9 hours thereafter, unless the employee has given 72 hours previous notice of his  
10 or her intention to quit, in which case the employee is entitled to his or her wages  
11 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.

12 87. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-  
13 CLASS Members' employment contract.

14 88. Cal. Lab. Code § 203 provides:

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

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

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

1                                   **SEVENTH CAUSE OF ACTION**

2                                   **For Violation of the Private Attorneys General Act**

3                                   **[Cal. Lab. Code §§ 2698, *et seq.*]**

4                                   **(By PLAINTIFF and Against All Defendants)**

5           91.    PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-90,  
6   supra, as though fully set forth at this point.

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

17          93.    PLAINTIFF, and such persons that may be added from time to time who satisfy  
18   the requirements and exhaust the administrative procedures under the Private Attorney General  
19   Act, brings this Representative Action on behalf of the State of California with respect to  
20   himself and all individuals who are or previously were employed by DEFENDANT in  
21   California and classified as non-exempt employees during the time period of November 28,  
22   2017 until the present (the "AGGRIEVED EMPLOYEES").

23          94.    On November 28, 2018, PLAINTIFF gave written notice by electronic mail to the  
24   Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
25   employer of the specific provisions of this code alleged to have been violated as required by  
26   Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein.  
27   The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has  
28

1 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a  
2 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of  
3 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 95. The policies, acts and practices heretofore described were and are an unlawful  
5 business act or practice because Defendant (a) failed to provide PLAINTIFFS and the other  
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to pay wages when  
7 due, (c) failed to properly record and provide legally required meal and rest periods, and (d)  
8 failed to pay overtime wages, all in violation of the applicable Labor Code sections listed in  
9 Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, and the  
10 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of  
11 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor  
12 Code Private Attorney General Act of 2004 as the representative of the State of California for  
13 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

14  
15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

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

2 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
3 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
4 pursuant to Cal. Code of Civ. Proc. § 382;

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

10 C) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
11 and the other members of the CALIFORNIA CLASS with all legally required  
12 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
13 rest breaks;

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

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

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

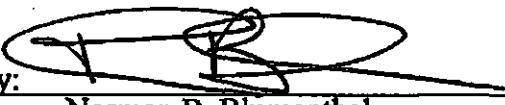
24 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys  
25 General Act of 2004.

26 4. On all claims:

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

- 1 B) Such other and further relief as the Court deems just and equitable; and,  
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
3 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.  
4

5 Dated: February 26, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP  
6

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8   
9 By: \_\_\_\_\_  
10 Norman B. Blumenthal  
11 Attorneys for Plaintiff  
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**DEMAND FOR A JURY TRIAL**

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

Dated: February 26, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal  
Attorneys for Plaintiff

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# **EXHIBIT 1**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: [www.bamlawca.com](http://www.bamlawca.com)

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

[Nick@bamlawca.com](mailto:Nick@bamlawca.com)

WRITERS EXT:

1004

November 28, 2018

CA1724

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency S&D Carwash Management, LLC

Online Filing

Certified Mail # 70172620000111321859

Jason Johnson

1380 Lead Hill Road, Suite 260

Roseville, CA 95661

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

Dear Sir/Madam:

Our offices represent Plaintiff Tyler Crum ("Plaintiff"), and other aggrieved employees in a lawsuit against S&D Carwash management, LLC ("Defendant"). Plaintiff was employed by Defendant in California from July of 2017 to September of 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control, including overtime worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime wages, and failed to pay these employees at the correct rate for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1198, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

RECEIVED  
CIVIL DROP BOX

2019 FEB 26 PM 3:21

CLERK COURTROOM 3  
SACRAMENTO COUNTY  
OF CALIFORNIA  
SACRAMENTO COUNTY