

1 Spencer C. Skeen, CA Bar No. 182216  
 spencer.skeen@ogletree.com  
 2 Tim L. Johnson, CA Bar No. 265794  
 tim.johnson@ogletree.com  
 3 Jesse C. Ferrantella, CA Bar No. 279131  
 jesse.ferrantella@ogletree.com  
 4 Nikolas T. Djordjevski, CA Bar No. 294728  
 nikolas.djordjevski@ogletree.com  
 5 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
 4370 La Jolla Village Drive, Suite 990  
 6 San Diego, CA 92122  
 Telephone: 858.652.3100  
 7 Facsimile: 858.652.3101

8 Attorneys for Defendants G6 HOSPITALITY, LLC and  
 MOTEL 6 OPERATING L.P.

9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**  
 11

12 CHRISTINA CUMMINGS, an  
 13 individual, on behalf of herself and on  
 behalf of all persons similarly situated,

14 Plaintiff,

15 vs.

16 G6 HOSPITALITY, LLC, a Limited  
 Liability Company; MOTEL 6  
 17 OPERATING L.P., a Limited  
 Partnership; and DOES 1-50, Inclusive,

18 Defendants.  
 19  
 20

Case No. '19CV122 GPC LL

**CLASS ACTION**

**DEFENDANTS' NOTICE OF  
 REMOVAL OF CIVIL ACTION TO  
 UNITED STATES DISTRICT  
 COURT**

[28 U.S.C. § 1332(d) (Class Action  
 Fairness Act)]

[Filed concurrently with Civil Cover  
 Sheet; Notice of Party with Financial  
 Interest; and Declarations of Mike  
 Moore and Jesse C. Ferrantella]

1 Defendants G6 Hospitality LLC (“G6”) and Motel 6 Operating L.P. (“Motel 6”)  
 2 remove this action from the San Diego County Superior Court to the Southern District  
 3 of California under 28 U.S.C. § 1332(d) (Class Action Fairness Act [“CAFA”]).  
 4 Removal is proper because: (1) Plaintiff and other members of the putative class are  
 5 citizens of a State different from any defendant; (2) the number of members of the  
 6 putative class is over 100; and (3) the matter in controversy exceeds the sum or value  
 7 of \$5,000,000, exclusive of interest and costs. The above facts were true when Plaintiff  
 8 filed her Complaint and remain true as of this Notice of Removal. All CAFA  
 9 requirements are satisfied.

## 10 **I. STATE COURT ACTION**

11 1. Plaintiff Christina Cummings filed a Class Action Complaint on  
 12 November 5, 2018 in the San Diego County Superior Court (“Action”). The Action  
 13 was assigned Case No. 37-2018-00056207-CU-OE-CTL. (Declaration of Jesse C.  
 14 Ferrantella [“Ferrantella Decl.”], ¶ 2.) A copy of the Class Action Complaint is  
 15 attached as **Exhibit 1**.

16 2. Defendants were served with the Complaint on December 18, 2018.  
 17 (Ferrantella Decl., ¶ 3.) A copy of the proof of service is attached as **Exhibit 2**.

18 3. On January 3, 2019, Plaintiff filed a First Amended Complaint (“FAC”).  
 19 (Ferrantella Decl., ¶ 4.) A copy of the FAC is attached as **Exhibit 3**.<sup>1</sup>

20 4. Defendants Answered the FAC in state court on January 16, 2019  
 21 (Ferrantella Decl., ¶ 5.) A copy of the Answer is attached hereto as **Exhibit 4**.

## 22 **II. REMOVAL IS TIMELY**

23 5. Under 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a),  
 24 Defendants’ deadline to remove is January 17, 2019. *Murphy Bros., Inc. v. Michetti*  
 25 *Pipe Stringing, Inc.*, 526 US 344, 354 (1999). This Notice of Removal is timely.

26  
 27  
 28 <sup>1</sup> Although the Action was removable based on allegations in the original Complaint,  
 all references will be to the operative FAC.

1 **III. REMOVAL IS PROPER UNDER CAFA**

2 6. Removal is proper given Plaintiff’s allegations and claims. The FAC  
3 asserts the following claims on a class and/or representative basis: (1) unfair  
4 competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4)  
5 failure to provide meal periods; (5) failure to provide rest periods; (6) failure to provide  
6 accurate itemized wage statements; (7) failure to pay wages upon termination or  
7 resignation; and (8) violation of PAGA. (Ex. 3, FAC.)

8 7. CAFA grants district courts original jurisdiction over civil class action  
9 lawsuits filed under federal or state law in which any member of a class of plaintiffs  
10 is a citizen of a state different from any defendant; the number of members of the  
11 proposed class is over 100 in the aggregate; and where the matter in controversy  
12 exceeds the sum or value of \$5,000,000, exclusive of interests and costs. 28 U.S.C. §  
13 1332(d). CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

14 8. This Court has jurisdiction over the Action under CAFA because it is a  
15 civil case filed as a class action wherein at least one member of the putative class of  
16 plaintiffs is a citizen of a state different from Defendants, the number of members in  
17 Plaintiff’s proposed classes in the aggregate is over 100, and the matter in controversy  
18 exceeds \$5,000,000, exclusive of interest and costs.

19 **A. CAFA’s Diversity of Citizenship Requirement Is Satisfied**

20 9. CAFA’s diversity requirement is satisfied “so long as ‘any member of a  
21 class of plaintiffs is a citizen of a State different from any defendant.’” *Bradford v.*  
22 *Bank of Am. Corp.*, No. CV 15-5201-GHK (JCX), 2015 WL 5311089, at \*3 (C.D. Cal.  
23 Sept. 10, 2015); citing, *California v. InelliGender, LLC*, 771 F.3d 1169, 1172 (9th Cir.  
24 2014); 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a), (b).

25 10. Plaintiff alleges that she was employed by Defendants in California from  
26 August 2018 to September 2018. (Ex. 3, FAC, ¶ 4.) At all relevant times, Plaintiff was  
27 domiciled in and a citizen of the State of California. (Declaration of Mike Moore  
28 [“Moore Decl.”], ¶ 2.)

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1 11. At all relevant times, Motel 6 has been a limited partnership organized  
2 under the laws of Delaware with its principal place of business in Texas. The majority  
3 of Motel 6’s executive and administrative functions have occurred in Texas. Motel 6  
4 is not organized in California and does not have its headquarters, executive offices, or  
5 principal place of business in California. (Moore Decl., ¶ 3.)

6 12. Similarly, and at all relevant times, G6 has been a limited liability  
7 company organized under the laws of Delaware with its principal place of business in  
8 Texas. The majority of G6’s executive and administrative functions have occurred in  
9 Texas. G6 also is not organized in California and does not have its headquarters,  
10 executive offices, or principal place of business in California. (Moore Decl., ¶ 4.)

11 **B. CAFA’s Class Size Requirement Is Satisfied**

12 13. Plaintiff defines the California Class Period as “any time during the  
13 period beginning four (4) years prior to the filing of [her] Complaint and ending on  
14 the date as determined by the Court.” (Ex. 3, FAC, ¶ 21.)

15 14. From November 5, 2014 through the date of this Notice of Removal,  
16 Defendants employed, in the aggregate, more than 100 putative class members.  
17 (Moore Decl., ¶ 5.)<sup>2</sup>

18 **C. CAFA’s Amount in Controversy Requirement Is Satisfied**

19 15. CAFA authorizes the removal of class action cases in which the amount  
20 in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

21 16. The “District Court [must] determine whether it has jurisdiction by  
22 adding up the value of the claim of each person who falls within the definition of [a  
23 plaintiff’s] proposed class and determine whether the resulting sum exceeds  
24 [\$5,000,000].” *Standard Fire Insurance Co. v. Knowles*, 133 S.Ct. 1345, 1348 (2013).  
25 For removal, “[t]he court accepts the allegations in the complaint as true and assumes  
26

27 \_\_\_\_\_  
28 <sup>2</sup> By making this statement, Defendants in no way concede that Plaintiff, or any of the  
putative class members in this action were or are employed by Defendant G6, and do  
not concede in any way that Plaintiff’s allegations in the Complaint are accurate.

1 the jury will return a verdict in the plaintiff’s favor on every claim.” *Henry v. Cent.*  
2 *Freight Lines, Inc.*, 692 F. App’x 806, 807 (9th Cir. 2017) (citing *Campbell v. Vitran*  
3 *Express, Inc.*, 471 F. App’x. 646, 648 (9th Cir. 2012)).

4 **1. Wage Statement Penalties**

5 17. Among other things, Plaintiff seeks penalties for allegedly inaccurate  
6 wage statements under California Labor Code § 226 on behalf of herself and the  
7 putative class. (Ex. 3, FAC, ¶ 99.) Plaintiff alleges that when she and putative class  
8 members worked overtime in the same pay period they earned incentive wages and/or  
9 missed meal and rest breaks, Defendants also failed to provide them with accurate  
10 itemized wage statements. (*Id.*, ¶ 98.) Aside from this alleged violation, Plaintiff also  
11 alleges Defendants failed to provide wage statements that list all the requirements  
12 under California Labor Code § 226 *et seq.* (*Id.*)

13 18. Labor Code § 226 carries a one year statute of limitations, making the  
14 liability period here span from November 5, 2017 through the present (i.e., one year  
15 prior to the filing of the Complaint). Cal. Code Civ. Proc. § 340(a); *Falk v. Children’s*  
16 *Hospital Los Angeles*, 237 Cal.App.4th 1454, 1469 (2015).

17 19. From November 5, 2017 to the present, Defendants employed at least  
18 5,446 employees who received approximately 83,079 wage statements. (Moore Decl.,  
19 ¶ 6.) None of these employees received more than 32 wage statements. (*Id.*)

20 20. Therefore, based on Plaintiff’s allegations, the amount in controversy for  
21 this claim is **\$8,035,600** ([5,446 wage statements x \$50 = \$272,300] + [77,633 wage  
22 statements x \$100 = \$7,763,300]). This claim alone meets the \$5,000,000 threshold.<sup>3</sup>

23 ///  
24 ///  
25 ///

26 \_\_\_\_\_  
27 <sup>3</sup> In alleging the amount in controversy, Defendants do not concede in any way that  
28 Plaintiffs’ allegations are accurate, or that Plaintiffs are entitled to any of the monetary  
relief they seek. Defendants do not concede that any putative class members are  
entitled to any recovery, or are appropriately included in the Action.

1                   **2.     Waiting Time Penalties**

2           21.    Plaintiff seeks waiting time penalties under California Labor Code § 203  
3 on behalf of herself and “all employees who terminated employment during the [Class  
4 Period].” (Ex. 3, FAC, ¶ 107.)

5           22.    California Labor Code § 203 provides that “[i]f an employer willfully  
6 fails to pay...any wages of an employee who is discharged or who quits, the wages of  
7 the employee shall continue as a penalty from the due date thereof at the same rate  
8 until paid or until an action therefor is commenced; but the wages shall not continue  
9 for more than 30 days.”

10          23.    A three-year statutory period applies to Plaintiff’s claim for waiting time  
11 penalties. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1398 (2010).

12          24.    From November 5, 2015 to the date of this removal, at least 7,855  
13 putative class members separated from their employment with Motel 6. These putative  
14 class members earned an average hourly rate of \$11.17, with an average daily rate of  
15 pay of \$89.36. (Moore Decl., ¶ 7.) Therefore, based on Plaintiff’s allegations, the  
16 amount in controversy for waiting time penalties is **\$21,057,684** ( $\$11.17 \times 8 \text{ hours} \times$   
17  $30 \text{ days} \times 7,855 \text{ putative class members} = \$21,057,684$ ).

18                   **3.     Attorneys’ Fees**

19          25.    Based on the above claims, Defendants have demonstrated that  
20 **\$29,093,284** is in controversy based on plaintiff’s allegations.<sup>4</sup>

21          26.    Plaintiff also seeks attorney fees. (Ex. 3, FAC, Prayer for Relief, ¶ 4(c).)  
22 In the Ninth Circuit, 25% of the total recovery is the “benchmark level” for reasonable  
23 attorney fees in class action cases. *Garibay v. Archstone Communities LLC*, 539 F.  
24 App’x 763, 764 (9th Cir. 2013). Using this 25% benchmark, courts have included  
25 attorney fees for 25% of the total recovery in determining the amount in controversy  
26 under CAFA. *Id.* (contemplating inclusion of 25% of total recovery in attorney fees

27 \_\_\_\_\_  
28 <sup>4</sup> \$8,035,600 in wage statement penalties + \$21,057,684 in waiting time penalties + \$  
= \$29,093,284.

1 under CAFA); *Rwomwijhu v. SMX, LLC*, No. CV1608105ABPJWX, 2017 WL  
2 1243131, at \*6 (C.D. Cal. Mar. 3, 2017) (including fees in calculation, noting that  
3 “courts in the Ninth Circuit, including this one, have allowed an estimated fee award  
4 of 25% of a plaintiff’s damages in calculating the amount in controversy under  
5 CAFA”); *Sanchez v. Russell Sigler, Inc.*, No. CV1501350ABPLAX, 2015 WL  
6 12765359, at \*7 (C.D. Cal. Apr. 28, 2015) (same).

7 27. Assuming an award of attorneys’ fees in the benchmark amount of 25%  
8 of the total recovery, the amount in controversy for such fees is **\$7,273,321**  
9 (\$29,093,284 x 0.25)

#### 10 4. Summary

11 28. Even excluding Plaintiff’s claims for failure to pay minimum wages,  
12 overtime wages, and to permit meal and rest periods, her allegations satisfy the  
13 \$5,000,000 threshold for purposes of removal under CAFA. Even the most  
14 conservative of estimated recoveries for Plaintiff’s additional claims pushes the  
15 amount in controversy further over the \$5 million threshold.

#### 16 **IV. VENUE IS PROPER IN THIS COURT**

17 29. Under 28 U.S.C. § 1441(a), this Notice of Removal is filed in the district  
18 court of the United States in which the Action is pending. The Superior Court for the  
19 County of San Diego is within the Southern District of California. (28 U.S.C. § 84(d).)  
20 Therefore, venue is proper in this Court because it is the district and division  
21 embracing the place where the Action is pending. (28 U.S.C. § 1441(a).)

22 30. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is  
23 accompanied by the Declarations of Mike Moore and Jesse C. Ferrantella, and Exhibits  
24 1 to 4, which constitute a copy of all processes, pleadings, and orders provided to  
25 Defendants.

26 31. As required by 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure  
27 6(a), this Notice of Removal was filed timely as Plaintiff served her original Complaint  
28 on Defendants on December 18, 2018. (Ferrantella Decl. ¶ 3, Ex. 2.)



1 32. As required by 28 U.S.C. §1446(d), Defendants provided Notice of  
2 Removal to Plaintiff through her attorneys of record.

3 33. As required by 28 U.S.C. §1446(d), a copy of the original Notice of  
4 Removal will be filed with the Superior Court of the State of California, for the County  
5 of San Diego.

6 34. If this Court has a question regarding the propriety of this Notice of  
7 Removal, Defendants request it issue an Order to Show Cause so it may have an  
8 opportunity to more fully brief the grounds for this removal.

9 **V. CONCLUSION**

10 For the foregoing reasons, Defendants remove the above-entitled action to the  
11 United States District Court for the Southern District of California.

12

13 DATED: January 17, 2019

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

14

15

16

By: /s/ Tim L. Johnson  
Spencer C. Skeen  
Tim L. Johnson  
Jesse C. Ferrantella  
Nikolas T. Djordjevski

17

18

19

Attorneys for Defendants G6  
HOSPITALITY, LLC and MOTEL 6  
OPERATING L.P.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christina Cummings

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Shani O. Zakay
3990 Old Town Avenue, Suite C 204
San Diego, California 92110

Tel: 619.255.9047 / Fax: 858.404.9203

DEFENDANTS

G6 Hospitality LLC; Motel 6 Operating L.P.

County of Residence of First Listed Defendant Carrollton, Texas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Spencer C. Skeen / Tim L. Johnson / Jesse C. Ferrantella
Ogletree Deakins Nash Smoak & Stewart, P.C.
4370 La Jolla Village Dr., Ste. 990
San Diego, CA 92122

Tel: 858.652.3100 / Fax: 858.652.3101

'19CV122 GPC LL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Main table for Nature of Suit with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d) - Class Action Fairness Act

Brief description of cause:

Wage and Hour Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE January 17, 2019

SIGNATURE OF ATTORNEY OF RECORD s/Tim L. Johnson

FOR OFFICE USE ONLY



# Exhibit 1

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**11/05/2018** at 02:24:18 Plw

Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

**ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619)255-9047  
Facsimile: (858) 404-9203  
Website: [www.zakaylaw.com](http://www.zakaylaw.com)

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)  
Kyle R. Nordrehaug (State Bar #205975)  
Aparajit Bhowmik (State Bar #248066)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232  
Website: [www.bamlawca.com](http://www.bamlawca.com)

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF COUNTY OF SAN DIEGO**

CHRISTINA CUMMINGS, an individual, on  
behalf of herself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

G6 HOSPITALITY, LLC, a Limited Liability  
Company; MOTEL 6 OPERATING, L.P., a  
Limited Partnership; and DOES 1-50,  
Inclusive,

Defendants.

Case No: 37-2018-00056207-CU-OE-CTL

**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 AND 203

**DEMAND FOR A JURY TRIAL**

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

6 **PRELIMINARY ALLEGATIONS**

7 1. Defendant G6 HOSPITALITY, LLC (“Defendant G6”) is a limited liability  
8 company and at all relevant times mentioned herein conducted and continues to conduct  
9 substantial and regular business throughout California. Defendant MOTEL 6 OPERATING,  
10 L.P. (“Defendant MOTEL 6”) is a limited partnership and at all relevant times mentioned herein  
11 conducted and continues to conduct substantial and regular business throughout California.  
12 Defendant G6 and Defendant MOTEL 6 are referred to herein collectively as  
13 “DEFENDANTS.”

14 2. Defendant G6 and Defendant MOTEL 6 were the joint employers of PLAINTIFF  
15 as evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
16 respectively, and are therefore jointly responsible as employers for the conduct alleged herein  
17 and collectively referred to herein as “DEFENDANTS”.

18 3. DEFENDANTS, doing business as “Motel 6,” own and operate an international  
19 chain of hotels. DEFENDANTS primarily own and operate discount motels with over 1300  
20 locations in the United States and Canada, including numerous locations in California.

21 4. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt  
22 employee entitled to overtime pay and meal and rest periods from August of 2018 to September  
23 of 2018. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANTS  
24 as a non-exempt employee paid in whole or in part on an hourly basis and received additional  
25 compensation from DEFENDANTS in the form of non-discretionary incentive wages.

26 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
27 defined as all individuals who are or previously were employed by Defendant G6 and/or  
28 Defendant MOTEL 6 in California and classified as non-exempt employees (the  
“CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the

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

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

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

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

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

4 **THE CONDUCT**

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

16 10. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and  
17 continue to fail to accurately calculate and pay PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS for their overtime worked. DEFENDANTS unlawfully and unilaterally  
19 failed to accurately calculate wages for overtime worked by PLAINTIFFS and other members  
20 of the CALIFORNIA CLASS in order to avoid paying these employees the correct overtime  
21 compensation. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS  
22 forfeited wages due them for working overtime without compensation at the correct overtime  
23 rates. DEFENDANTS' uniform policy and practice to not pay the members of the  
24 CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with  
25 applicable law is evidenced by DEFENDANTS' business records.

26 11. State law provides that employees must be paid overtime at one-and-one-  
27 halftimes their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members  
28



1 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
2 employee's performance.

3 12. The second component of PLAINTIFF'S and other CALIFORNIA CLASS  
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
6 performance for DEFENDANTS. The non-discretionary incentive program provided all  
7 employees paid on an hourly basis with incentive compensation when the employees met the  
8 various performance goals set by DEFENDANTS. However, when calculating the regular rate  
9 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,  
10 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular  
11 rate of pay" for purposes of calculating overtime pay. Management and supervisors described  
12 the incentive program to potential and new employees as part of the compensation package. As  
13 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
14 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted  
15 in a systematic underpayment of overtime compensation to PLAINTIFF and other  
16 CALIFORNIA CLASS Members by DEFENDANTS.

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

27 14. As a result of their rigorous work schedules, PLAINTIFF and other  
28 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other  
2 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS  
3 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,  
4 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a  
5 second off-duty meal period each workday in which these employees were required by  
6 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA  
7 CLASS Members therefore forfeited meal breaks without additional compensation and in  
8 accordance with DEFENDANTS' strict corporate policy and practice

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

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

1 rates in effect during the pay period and the corresponding amount of time worked at each  
2 hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to  
3 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California  
4 Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF  
5 and the other members of the CALIFORNIA CLASS with wage statements which violated Cal.  
6 Lab. Code § 226.

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

18 18: Specifically as to PLAINTIFF’S pay, DEFENDANTS provided compensation to  
19 her in the form of two components. One component of PLAINTIFF’S compensation was a base  
20 hourly wage. The second component of PLAINTIFF’S compensation were non-discretionary  
21 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFFS met certain  
22 predefined performance requirements. PLAINTIFF met DEFENDANTS’ predefined eligibility  
23 performance requirements in various pay periods throughout his employment with  
24 DEFENDANTS and DEFENDANTS paid PLAINTIFF the incentive wages. During these pay  
25 periods in which PLAINTIFF was paid the non-discretionary incentive wages by  
26 DEFENDANTS, PLAINTIFF also worked overtime for DEFENDANTS, but DEFENDANTS  
27 never included the incentive compensation in PLAINTIFF’S regular rate of pay for the purposes  
28 of calculating what should have been PLAINTIFF’S accurate overtime rate and thereby

1 underpaid PLAINTIFF for overtime worked throughout her employment with DEFENDANTS.  
2 The incentive compensation paid by DEFENDANTS constituted wages within the meaning of  
3 the California Labor Code and thereby should have been part of PLAINTIFF'S "regular rate of  
4 pay." PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and  
5 was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work  
6 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an  
7 off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-  
8 duty meal period each workday in which he was required by DEFENDANTS to work ten (10)  
9 hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional  
10 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.  
11 DEFENDANTS also provided PLAINTIFF with a paystub that failed to accurately display  
12 PLAINTIFF'S correct rates of overtime pay and payments for missed meal and rest periods for  
13 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not  
14 fully paid PLAINTIFF the overtime compensation still owed to them or any penalty wages  
15 owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF  
16 individually does not exceed the sum or value of \$75,000.

#### 17 JURISDICTION AND VENUE

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

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

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**THE CALIFORNIA CLASS**

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21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Defendant G6 and/or Defendant MOTEL 6 in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

24. DEFENDANTS, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
2 willfully, engaged in a practice whereby DEFENDANTS systematically failed to correctly  
3 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS, even though DEFENDANTS enjoyed the benefit of  
5 this work, required employees to perform this work and permitted or suffered to permit this  
6 overtime work.

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

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

26 27. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
27 CLASS Members is impracticable.

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1           28.    DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS  
2 under California law by:

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

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

13          c.    Committing an act of unfair competition in violation of the California Unfair  
14          Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to  
15          provide mandatory meal and/or rest breaks to PLAINTIFF and the  
16          CALIFORNIA CLASS members; and

17          d.    Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
18          §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
19          company policies, practices and procedures that uniformly and systematically  
20          failed to record and pay PLAINTIFF and other members of the CALIFORNIA  
21          CLASS for all time worked, including minimum wages owed and overtime  
22          wages owed for work performed by these employees.

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

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

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

24          30. In addition to meeting the statutory prerequisites to a Class Action, this action is

25 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
  - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due, including the correct overtime rate, for all time worked by the members of the CALIFORNIA CLASS as required by law;
- i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANTS' policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

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- i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;
  - 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 DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is

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

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

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

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

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

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

26 34. DEFENDANTS, 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 DEFENDANTS failed to correctly calculate overtime  
2 compensation for the overtime worked by PLAINTIFF and the other members of the  
3 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this  
4 work, required employees to perform this work and permitted or suffered to permit this  
5 overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-  
6 CLASS Members overtime wages at the correct amount to which these employees are entitled  
7 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling  
8 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS,  
9 the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 20 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
21 overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS  
22 in violation of the California Labor Code and California regulations and the  
23 applicable California Wage Order;
- 24 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled  
25 to overtime compensation for overtime worked under the overtime pay  
26 requirements of California law;

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- 1 c. Whether DEFENDANTS failed to accurately record the applicable overtime
- 2 rates for all overtime worked PLAINTIFF and the other members of the
- 3 CALIFORNIA LABOR SUB-CLASS;
- 4 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
- 5 of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
- 6 thirty (30) minute meal breaks and rest periods;
- 7 e. Whether DEFENDANTS failed to provide PLAINTIFF and the other members
- 8 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
- 9 statements;
- 10 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 11 conduct;
- 12 g. The proper measure of damages and penalties owed to the members of the
- 13 CALIFORNIA LABOR SUB-CLASS; and
- 14 h. Whether DEFENDANTS' conduct was willful.

15 38. DEFENDANTS, as a matter of company policy, practice and procedure, failed to  
16 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS  
17 Members and failed to provide accurate records of the applicable overtime rates for the  
18 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS  
19 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly  
20 basis by DEFENDANTS according to uniform and systematic company procedures as alleged  
21 herein above. This business practice was uniformly applied to each and every member of the  
22 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
23 adjudicated on a class-wide basis.

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

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

- 27 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
- 28 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members

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is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

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

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

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

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

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- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or
  - ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due, including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

1                   avoided to recover the relatively small amount of economic losses  
2                   sustained by the individual CALIFORNIA LABOR SUB-CLASS  
3                   Members when compared to the substantial expense and burden of  
4                   individual prosecution of this litigation;

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

7                   1. Inconsistent or varying adjudications with respect to individual  
8                   members of the CALIFORNIA LABOR SUB-CLASS, which  
9                   would establish incompatible standards of conduct for the  
10                  DEFENDANTS; and/or,

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

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

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

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

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

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
2 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
3 PERIOD; and

4 i. Class treatment provides manageable judicial treatment calculated to bring an  
5 efficient and rapid conclusion to all litigation of all wage and hour related claims  
6 arising out of the conduct of DEFENDANTS as to the members of the  
7 CALIFORNIA LABOR SUB-CLASS.

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**FIRST CAUSE OF ACTION**

10

**UNLAWFUL BUSINESS PRACTICES**

11

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

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**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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44. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.  
Code § 17021.

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

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Any person who engages, has engaged, or proposes to engage in unfair competition may  
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 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. (Cal. Bus. & Prof. Code § 17203).

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46. By the conduct alleged herein, DEFENDANTS have engaged and continues to  
engage in a business practice which violates California law, including but not limited to, the  
applicable Wage Order(s), the California Code of Regulations and the California Labor Code

1 including Sections 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which this  
2 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §  
3 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
4 competition, including restitution of wages wrongfully withheld.

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

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

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

24 50. By the conduct alleged herein, DEFENDANTS' practices were also unfair and  
25 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide  
26 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

27 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty



1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
2 for each workday in which a second off-duty meal period was not timely provided for each ten  
3 (10) hours of work.

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

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

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

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

23 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
24 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
25 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from  
26 engaging in any unlawful and unfair business practices in the future.

27 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

1 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.  
2 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
4 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to  
5 engage in these unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

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

9 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
10 **Defendants)**

11 58. 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  
13 of this Complaint.

14 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
15 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor  
16 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
17 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
18 Members.

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

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

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

26 63. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and  
27 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
28 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice

1 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the  
2 other members of the CALIFORNIA LABOR SUB-CLASS.

3 64. DEFENDANTS' uniform pattern of unlawful wage and hour practices  
4 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
5 whole, as a result of implementing a uniform policy and practice that denies accurate  
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS in regards to minimum wage pay.

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

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

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
2 correct minimum wages for their time worked.

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

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

22 **THIRD CAUSE OF ACTION**

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

25 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
26 **Defendants)**

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

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

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

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

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

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

27 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices  
28 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
whole, as a result of implementing a uniform policy and practice that denied accurate  
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

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

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

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

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

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

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



1 84. By virtue of DEFENDANTS' 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 85. DEFENDANTS 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. DEFENDANTS 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 DEFENDANTS 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 86. 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, DEFENDANTS  
17 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
18 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious 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 to  
21 increase company profits at the expense of these employees.

22 87. 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 DEFENDANTS, 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, DEFENDANTS'  
28 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as



1 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other  
2 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

5 (Cal. Lab. Code §§ 226.7 & 512)

6 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all  
7 Defendants)

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

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

24 90. DEFENDANTS further violated California Labor Code §§ 226.7 and the  
25 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR  
26 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable  
27 Wage Order, one additional hour of compensation at each employee's regular rate of pay for  
28 each workday that a meal period was not provided.

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

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
9 **Defendants)**

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

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

23 94. DEFENDANTS further violated California Labor Code §§ 226.7 and the  
24 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR  
25 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable  
26 Wage Order, one additional hour of compensation at each employee's regular rate of pay for  
27 each workday that rest period was not provided.  
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95. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

**SIXTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS  
(Cal. Lab. Code § 226)**

**(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

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

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

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

- 1 h. The name and address of the legal entity that is the employer; and
- 2 i. All applicable hourly rates in effect during the pay period and the corresponding
- 3 number of hours worked at each hourly rate by the employee.

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

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

3  
4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

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

7 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
8 **Defendants)**

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

12 101. Cal. Lab. Code § 200 provides that:

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

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

17 102. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
18 an employee, the wages earned and unpaid at the time of discharge are due and payable  
19 immediately."

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

21 If an employee not having a written contract for a definite period quits his or her  
22 employment, his or her wages shall become due and payable not later than 72  
23 hours thereafter, unless the employee has given 72 hours previous notice of his or  
her intention to quit, in which case the employee is entitled to his or her wages at  
24 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  
25 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  
26 provide payment within 72 hours of the notice of quitting.

27 104. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR  
28 SUB-CLASS Members' employment contract.

1 105. Cal. Lab. Code § 203 provides:

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

7 106. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-  
8 CLASS Members terminated and DEFENDANTS have not tendered payment of overtime  
9 wages, to these employees who actually worked overtime, as required by law.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for a judgment against each Defendants, jointly and  
18 severally, as follows:

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

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

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

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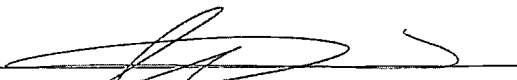
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3. On all claims:

- 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: October 29, 2018

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiff

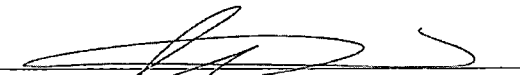
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**DEMAND FOR A JURY TRIAL**

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

DATED: October 29, 2018

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Motel 6 Facing Worker's Unpaid Overtime Suit in California](#)

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