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MAR 06 2009

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10 Attorneys for Plaintiff Greg Smith, Judy Orth, and Gloria Carrozzo
11 on behalf of themselves and all others similarly situated,

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN DIEGO

14 GREG SMITH, JUDY ORTH, and GLORIA
15 CARROZZO on behalf of themselves and all
16 others similarly situated,

17 Plaintiffs,

19 v.

20 CALIFORNIA PIZZA KITCHEN, INC., a
Delaware Corporation; and DOES 1 through
21 100, Inclusive,

22 Defendants.

) CASE NO. 37-2008-00083992-CU-OE-CTL
) ASSIGNED FOR ALL PURPOSES TO:
) The Honorable Timothy Taylor
) Department 72

) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT FOR DAMAGES,**
) **INJUNCTIVE RELIEF, AND**
) **RESTITUTION**

) 1) Failure to pay Overtime Wages (Lab.
) Code, §§ 1194)

) 2) Failure to Pay Wages of Terminated or
) Resigned Employees (Lab. Code, §§ 201-
) 203, 1199)

) 3) Failure to Provide Meal Periods or
) Compensation in Lieu Thereof (Lab. Code,
) §§ 226.7, 512; IWC Orders; Cal. Code
) Regs., Title 8, § 11050)

) 4) Failure to Provide Rest Periods or
) Compensation in Lieu Thereof (Lab. Code,
) §§ 226.7, 512; IWC Orders; Cal. Code
) Regs., Title 8, § 11050)

- 1) 5) **Knowing and Intentional Failure to**
- 2) **Comply With Itemized Employee Wage**
- 3) **Statement Provisions (Lab. Code, § 226**
- 4) **(a),(b))**
- 5) 6) **Violations of the Unfair Competition**
- 6) **Law (Bus. & Prof. Code, §§ 17200-17208)**
- 7) **DEMAND FOR JURY TRIAL**

6 Plaintiffs GREG SMITH, JUDY ORTH, and GLORIA CARROZZO, on behalf of
 7 themselves and all others similarly situated, complain and allege as follows:

8 **I.**

9 **INTRODUCTION**

10 1. This case arises out of the non-payment of overtime compensation and failure to
 11 provide rest and meal periods to certain California employees of Defendant CALIFORNIA
 12 PIZZA KITCHEN, INC. (hereinafter “CPK” or “DEFENDANTS”). The proposed plaintiff Class
 13 consists of persons employed by CPK as Front of House Managers, Back of House Managers,
 14 Kitchen Managers, General Managers, and Assistant General Managers who, during the Class
 15 Period, although performing non-exempt functions for the Defendants, were treated as exempt
 16 employees and not paid overtime compensation.

17 2. The Labor Code § 203 Sub-Class includes Class members who ended their
 18 employment for the Defendants during the Class Period, respectively, but who were not timely
 19 paid wages as required by Labor Code §§ 201-203. Such Plaintiff Sub-Class members are
 20 additionally entitled to penalties pursuant to California Labor Code § 203. The Meal Period Sub-
 21 Class includes Plaintiff Class members who were denied meal periods and commensurate pay
 22 under Labor Code § 226.7. The Rest Period Subclass includes Plaintiff Class members who were
 23 denied rest periods and commensurate pay under Labor Code § 226.7.

24 3. As used herein, the term “Plaintiffs” includes GREG SMITH, JUDY ORTH, and
 25 GLORIA CARROZZO who are named the Plaintiff Class representatives; the term “Plaintiff
 26 Class” includes the Plaintiffs and all Plaintiff Class members; the term “non-exempt” refers to
 27 the Plaintiffs and Plaintiff Class members who were paid salaries but not properly exempt from
 28 the lawful requirement to be paid overtime compensation by the Defendants.

1 the Class Period in salaried positions as a General Manager and Assistant General Manager.

2 8. Plaintiff GLORIA CARROZZO is a resident of the County of Los Angeles at
3 various times herein relevant, was an employee of the Defendants and at other times, an
4 employee entitled to overtime compensation, rest and meal period compensation, and penalties
5 from the Defendants. Plaintiff GLORIA CARROZZO was employed by the Defendants within
6 four years prior to the commencement of this action and through 2008, in the County of Los
7 Angeles. She was employed by Defendants during the Class Period in salaried positions as a
8 Front of House Manager.

9 9. Each of the Plaintiff Class members are identifiable, similarly situated persons
10 who were employed as "Front of House Managers," "Back of House Managers," "Kitchen
11 Managers," "General Managers," or "Assistant General Managers" in California for the
12 Defendants during the Class Period. "Front of House Managers," "Back of House Managers,"
13 "Kitchen Managers," "General Managers," or "Assistant General Managers" positions include all
14 other job titles or descriptions with the same job functions, primarily engaged in serving
15 customers and related duties as more fully described below.

16 10. Certain members of the Plaintiff Class comprise a "Plaintiff Sub-Class," which
17 consists of those Plaintiff Sub-classes members who were not provided rest and/or meal periods
18 or paid premium pay in lieu thereof. Other Plaintiff Sub-Classes consist of members of the
19 Plaintiff Class and who ended their employment with Defendants, but were not fully and timely
20 paid wages as required by Labor Code §§ 201-203, including the overtime compensation claimed
21 in this action.

22 **B. The Defendants**

23 11. Plaintiffs are informed and believe and thereon allege that CPK is a Delaware
24 corporation and is and was the employer of the Plaintiffs and the members of Plaintiff Class and
25 Plaintiff Sub-Class during the Class Period.

26 12. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
27 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through
28 100, inclusive, but on information and belief allege that said Defendants are legally responsible

1 for the payment of overtime compensation, rest and meal period compensation and/or Labor
2 Code § 203 penalties to the Plaintiff Class members by virtue of their unlawful practices, and
3 therefore sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to
4 allege the true names and capacities of the DOE Defendants when ascertained.

5 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
8 Defendant are legally attributable to the other Defendants.

9 IV.

10 GENERAL ALLEGATIONS

11 14. California Labor Code § 1194, provides that notwithstanding any agreement to
12 work for a lesser wage, an employee receiving less than the legal overtime compensation is
13 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
14 interest thereon, reasonable attorneys fees, and costs of suit.

15 15. Further, Business and Professions Code § 17203 provides that any person who
16 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
17 and Professions Code § 17204 provides that any person who has suffered actual injury and has
18 lost money or property as a result of the unfair competition may bring an action in a court of
19 competent jurisdiction.

20 16. During all, or a portion, of the Class Period, Plaintiffs and each member of the
21 Plaintiff Class were employed by Defendants, and each of them, in the State of California.

22 17. Each of the Plaintiffs and each Plaintiff Class member was a non-exempt
23 employee covered under one or more Industrial Welfare Commission (IWC) Wage Orders,
24 including Wage Order 5-2000, 5-2001 ("Wage Orders"), and Labor Code § 510, and/or other
25 applicable wage orders, regulations and statutes, and each Plaintiff Class member was not subject
26 to an exemption for executive, administrative and professional employees, which imposed an
27 obligation on the part of the Defendants to pay Plaintiffs and Plaintiff Class members lawful
28 overtime compensation, and rest and meal period compensation.

1 18. During the Class Period, Defendants were obligated to pay Plaintiffs and the
2 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one
3 (1) day or forty (40) hours in one week.

4 19. The Plaintiffs and each Plaintiff Class member primarily performed non-exempt
5 work in excess of the maximum regular rate hours set by the IWC in the above Wage Orders,
6 regulations or statutes, and entitle the Plaintiffs and the Plaintiff Class to overtime compensation
7 at time and a half rate, and when applicable, double time rates as set forth by the above Wage
8 Orders, regulations and/or statutes.

9 20. Each Labor Code section 203 Plaintiff Sub-Class member that ended his or her
10 employment during the Class Period, but were not paid the above due overtime compensation
11 timely upon the termination of their employment as required by Labor Code §§201-203, are
12 entitled to penalties as provided by California Labor Code § 203.

13 21. During the Class Period, the Defendants, and each of them, required Plaintiffs and
14 the Plaintiff Class to work overtime without lawful compensation, in violation of the various
15 above applicable Wage Orders, regulations and statutes, and the Defendants: (1) willfully failed
16 and refused, and continue to fail and refuse to pay lawful overtime compensation to the Plaintiff
17 Class members; and (2) willfully failed and refused, and continue to fail and refuse to pay wages
18 promptly when due upon termination of employment to each of the Plaintiff Sub Class members.

19 22. During the Class Period, the Defendants, and each of them, required members of
20 the Plaintiff Class to work without being given paid ten minute rest periods for every four hours
21 or major fraction thereof worked and without being given a 30-minute meal period for shifts of at
22 least five hours and second 30-minute meal periods for shifts of at least ten hours during which
23 Plaintiff Class members were relieved of all duties and free to leave the premises, nor did
24 Defendants pay any Plaintiff Class member one hour's pay at the employee's regular rate of pay
25 as premium pay compensation for failure to provide rest and/or meal periods.

26 23. Plaintiff Class member Front of House Manager, Back of House Manager,
27 Kitchen Manager, General Manager, and Assistant General Manager positions are primarily
28 involved in customer service and related non-exempt functions. They are not employed to

1 manage Defendants' enterprise in managerial duties, and their actual time in such managerial
2 duties comprise far less than half of their actual daily job duties. Hence, the work performed in
3 the so-called Front of House Manager, Back of House Manager, Kitchen Manager, General
4 Manager, and Assistant General Manager positions is not executive work related to the managing
5 of the business of Defendants or a recognized department or subdivision thereof but rather is
6 non-exempt customer service work.

7 V.

8 **CLASS ACTION ALLEGATIONS**

9 24. Plaintiffs bring this action on behalf of themselves and all other similarly situated
10 persons, as a class action pursuant to California Code of Civil Procedure § 382. The class which
11 Plaintiffs seek to represent is composed of and defined as follows:

12 Plaintiff Class: All of Defendants' California Front of House Managers, Back of
13 House Managers, and Kitchen Managers, and related positions, employed by
14 Defendants on or after four years prior to the commencement of this action
15 ("Relevant Time Period"), and General Managers and Assistant General Managers
16 employed by Defendants on or after four years prior to November 21, 2008, who
17 were not paid the legally requisite overtime rate for all hours worked in excess of
18 eight (8) hours per workday and/or forty (40) hours per workweek.

19 25. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
20 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
21 follows:

22 Plaintiff Sub-Class: All of Defendants' California Front of House Managers, Back
23 of House Managers, and Kitchen Managers, and related positions, during the
24 Relevant Time Period, to whom Defendant willfully failed to pay wages owing
25 after they left employment or were discharged and who seek unpaid wages
26 pursuant to Labor Code § 203.

27 26. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
28 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as

1 follows:

2 Plaintiff Sub-Class: All of Defendants' California General Managers and
3 Assistant General Managers, and related positions, who were employed by
4 Defendants on or after four years prior to November 21, 2008 to whom Defendant
5 willfully failed to pay wages owing after they left employment or were discharged
6 and who seek unpaid wages pursuant to Labor Code § 203.

7 27. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
8 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
9 follows:

10 Plaintiff Sub-Class: All of Defendants' California Front of House Managers, Back
11 of House Managers, and Kitchen Managers, and related positions, during the
12 Relevant Time Period, from whom Defendant deprived the requisite meal periods
13 and payments under Labor Code § 226.7.

14 28. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
15 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
16 follows:

17 Plaintiff Sub-Class: All of Defendants' California General Managers and
18 Assistant General Managers, and related positions, who were employed by
19 Defendants on or after four years prior to November 21, 2008, from whom
20 Defendant deprived the requisite meal periods and payments under Labor Code §
21 226.7.

22 29. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
23 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
24 follows:

25 Plaintiff Sub-Class: All of Defendants' California Front of House Managers, Back
26 of House Managers, and Kitchen Managers, and related positions, during the
27 Relevant Time Period, and all of Defendants' General Managers and Assistant
28 Managers during the General Manager Sub-class Period, from whom Defendant

1 deprived the requisite rest periods and payments under Labor Code § 226.7.

2 30. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
3 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
4 follows:

5 Plaintiff Sub-Class: All of Defendants' California General Managers and
6 Assistant General Managers, and related positions, who were employed by
7 Defendants on or after four years prior to November 21, 2008, from whom
8 Defendant deprived the requisite rest periods and payments under Labor Code §
9 226.7.

10 31. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
11 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
12 follows:

13 Plaintiff Sub-Class: All of Defendants' California Front of House Managers, Back
14 of House Managers, and Kitchen Managers, and related positions, during the
15 Relevant Time Period, and all of Defendants' General Managers and Assistant
16 Managers during the General Manager Sub-class Period, as to whom Defendant
17 improperly failed to provide accurate itemized wage statements under Labor Code
18 § 226(b).

19 32. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
20 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
21 follows:

22 Plaintiff Sub-Class: All of Defendants' California General Managers and
23 Assistant General Managers, and related positions, who were employed by
24 Defendants on or after four years prior to November 21, 2008, as to whom
25 Defendant improperly failed to provide accurate itemized wage statements under
26 Labor Code § 226(b).

27 33. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend
28 or modify the Class description with greater specificity or further division into subclasses or

1 limitation to particular issues.

2 34. This action has been brought and may be maintained as a class action pursuant to
3 Code of Civil Procedure § 382 because there is a well-defined common interest of many persons
4 and it is impractical to bring them all before the court.

5 a. The Plaintiff Class and Plaintiff Sub-Class members are so numerous that
6 the individual joinder of all such plaintiffs is impractical. While the exact number of class
7 members is unknown to the Plaintiffs at this time, the Plaintiffs believe there are over 100 class
8 members. Therefore, joinder of all Plaintiff Class and Plaintiff Sub-Class members is
9 impractical.

10 b. Common questions of law and fact exist as to the Plaintiffs, Plaintiff
11 Class, and Plaintiff Sub-Class members, and predominate over any questions which affect only
12 individual members of the Plaintiff Class and Plaintiff Sub-Class. These common questions
13 include, but are not limited to:

14 (1) Whether Plaintiffs and Plaintiff Class members are entitled to
15 overtime compensation from the Defendants under the applicable IWC Wage Orders, regulations
16 and statutes, or whether each member of the Plaintiff Class is “exempt” from the requirements of
17 overtime compensation as set forth in the applicable Wage Orders, regulations and statutes;

18 (2) Whether Plaintiffs, Plaintiff Sub-Class members are entitled to
19 penalties under Labor Code § 203 from the Defendants because those Plaintiff Sub-Class
20 members were owed wages, including overtime compensation, at the time their employment
21 ended, and for which the Plaintiff Sub-Class members were not paid promptly as required by
22 Labor Code §§ 201 and 202;

23 (3) Whether the Plaintiff Class members as a Class performed
24 restaurant-service related functions and spent less than 50% percent of their time performing
25 managerial functions;

26 (4) Whether Defendants failed to provide proper rest and meal periods
27 or appropriate premium pay in lieu thereof;

28 (5) Whether the Defendants violated the Unfair Competition Act,

1 Business and Professions Code § 17200, et seq., by their practices as alleged herein;

2 (6) Whether Defendants violated section 1174 of the Labor Code by
3 failing to keep accurate records of the Plaintiff Class members' hours of work;

4 (7) The effect upon and the extent of any injuries sustained by the
5 Plaintiff Class members and Plaintiff Sub-Class members and appropriate type and/or measure of
6 damages;

7 (8) Whether the Plaintiff Class is entitled to waiting time penalties
8 under Labor Code section 203;

9 (9) The amount of restitution owed by the Defendants attributable to
10 their violation of the Unfair Competition Law by failure to pay overtime compensation to the
11 class members, and other wage violations;

12 (10) The appropriateness and nature of relief to each Plaintiff Class
13 member and Plaintiff Sub-Class member;

14 (11) The appropriate nature of class wide equitable relief; and

15 (12) The extent of liability of each Defendant, including DOE
16 Defendants, to each Plaintiff Class member and each Plaintiff Sub-Class member.

17 c. Plaintiffs are members of the Plaintiff Class and at least one Plaintiff Sub-
18 Class, and their claims are typical of the claims of the Plaintiff Class and Plaintiff Sub-Class
19 members. Plaintiffs and all members of the Plaintiff Class and Plaintiff Sub-Classes sustained
20 similar injuries and damages arising out of Defendants' common course of conduct in violation
21 of the law as alleged herein.

22 d. Plaintiffs will adequately and fairly protect the interests of the members of
23 the Plaintiff Class and Plaintiff Sub-Class. Plaintiffs were employed by the Defendants in
24 misclassified exempt managerial positions in which they were in fact primarily performing non-
25 exempt duties at all times during the class period and are therefore adequate representatives for
26 the Plaintiff Class and Plaintiff Sub-Class, as they have no interest adverse to the interests of the
27 absent class members. Plaintiffs are represented by legal counsel who have substantial class
28 action experience in civil litigation and employment law.

1 e. A class action is superior to other available means of fair and efficient
2 adjudication of the claims of the Plaintiff Class and Plaintiff Sub-Class members, since joinder of
3 all members of the Plaintiff Class and Plaintiff Sub-Classes is impractical. Class action
4 treatment will allow a large number of similarly situated persons to prosecute their common
5 claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of
6 effort and expense that numerous individual actions would cause to such plaintiffs or to the court
7 system. Further, the damages of many individual class members may be relatively small, and the
8 burden and expenses of individual litigation would make it difficult or impossible for individual
9 members of the class to seek and obtain relief, while a class action will serve an important public
10 interest. Further, individual litigation would present the potential for inconsistent or
11 contradictory judgments.

12 34. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this action that would preclude its maintenance as a class action.

14 VI.

15 VIOLATIONS ALLEGED

16 FIRST CAUSE OF ACTION

17 OVERTIME COMPENSATION DUE

18 **(Plaintiffs and each Plaintiff Class member against each Defendant)**

19 35. Plaintiffs incorporate paragraphs 1 through 34 of this complaint as if fully alleged
20 herein.

21 36. Plaintiffs and the Plaintiff Class members are entitled to overtime compensation
22 for overtime work performed for the Defendants, in an amount according to proof. Pursuant to
23 Labor Code § 1194, Front of House Managers, Back of House Managers, and Kitchen Managers
24 Plaintiff Class members seek the payment of all overtime compensation which they earned and
25 accrued after four (4) years prior to filing of this complaint, and General Manager and Assistant
26 General Managers seek payment of all overtime compensation which they earned and accrued
27 after four (4) years prior to November 21, 2008, according to proof.

28 37. Additionally, Plaintiffs and Plaintiff Class members are entitled to attorneys' fees,

1 and costs, pursuant to California Labor Code § 1194 and prejudgment interest.

2 Wherefore, Plaintiffs and the Plaintiff Class members request relief as hereinafter prayed
3 for.

4 **SECOND CAUSE OF ACTION**

5 **LABOR CODE § 203 PENALTIES**

6 **(Plaintiffs and each Plaintiff Sub-Class member against each Defendant)**

7 38. Plaintiffs incorporate paragraphs 1 through 37 of this complaint as if fully alleged
8 herein.

9 39. Plaintiffs and/or the members of the Plaintiff Sub-Class who ended their
10 employment with the Defendants during the Class Period, were entitled to be promptly paid
11 lawful overtime compensation and other premiums, as required by Labor Code §§201-203.
12 Pursuant to Labor Code § 203, such Plaintiff Sub-Class members seek the payment of penalties
13 pursuant to Labor Code § 203, according to proof.

14 40. Additionally, Plaintiffs and Plaintiff Sub-Class members are entitled to attorneys'
15 fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

16 Wherefore, Plaintiffs and the Plaintiff Sub-Class members request relief as hereinafter
17 prayed for.

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(Plaintiffs and each Plaintiff Class and Sub-Class member against each Defendant)**

21 41. Plaintiffs incorporate paragraphs 1 through 40 of this complaint as if fully alleged
22 herein.

23 42. Plaintiffs and Plaintiff Class members are entitled to an hour of pay for each day
24 that Defendants failed to properly provide one or more meal periods, in an amount according to
25 proof. Pursuant to Labor Code § 226.7, Front of House Managers, Back of House Managers, and
26 Kitchen Managers Plaintiff Class members seek the payment of all meal period compensation
27 which they are owed beginning four (4) years prior to filing of this, and General Manager and
28 Assistant General Managers seek payment of all meal period compensation which they earned

1 and accrued after four (4) years prior to November 21, 2008, according to proof.

2 43. Additionally, Plaintiffs and Plaintiff Sub-Class members are entitled to attorneys'
3 fees, and costs, and prejudgment interest.

4 Wherefore, Plaintiffs and the Plaintiff Sub-Class members request relief as hereinafter
5 prayed for.

6 **FOURTH CAUSE OF ACTION**

7 **REST PERIOD VIOLATIONS**

8 **(Plaintiffs and each Plaintiff Class and Sub-Class member against each Defendant)**

9 44. Plaintiffs incorporate paragraphs 1 through 43 of this complaint as if fully alleged
10 herein.

11 45. Plaintiffs and Plaintiff Class members are entitled to an hour of pay for each day
12 that Defendants failed to properly provide one or more rest periods, in an amount according to
13 proof. Pursuant to Labor Code § 226.7, Front of House Managers, Back of House Managers, and
14 Kitchen Managers Plaintiff Class members seek the payment of all rest period compensation
15 which they are owed beginning four (4) years prior to filing of this, and General Manager and
16 Assistant General Managers seek payment of all rest period compensation which they earned and
17 accrued after four (4) years prior to November 21, 2008, according to proof.

18 46. Additionally, Plaintiffs and Plaintiff Sub-Class members are entitled to attorneys'
19 fees, and costs, and prejudgment interest.

20 Wherefore, Plaintiffs and the Plaintiff Sub-Class members request relief as hereinafter
21 prayed for.

22 **FIFTH CAUSE OF ACTION**

23 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

24 **EMPLOYEE WAGE STATEMENT PROVISIONS**

25 **(Lab. Code, § 226(b))**

26 **(Plaintiffs and each Plaintiff Class and Sub-Class member against each Defendant)**

27 45. Plaintiffs incorporate paragraphs 1 through 44 as though fully set forth herein.

28 46. Section 226(a) of the California Labor Code requires Defendants to itemize in

1 wage statements all deductions from payment of wages and to accurately report total hours
2 worked by Plaintiffs and the members of the proposed Plaintiff Class. Defendants have
3 knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every
4 wage statement provided to Plaintiffs and members of the proposed Plaintiff Class.

5 47. As a consequence of Defendants' knowing and intentional failure to comply with
6 Labor Code section 226(a), Plaintiffs and the Plaintiff Class they seek to represent are entitled to
7 actual damages or penalties not to exceed \$4000 for each employee pursuant to Labor Code
8 section 226(b), together with interest thereon and attorneys' fees and costs.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described
10 below.

11 SIXTH CAUSE OF ACTION

12 **UNFAIR COMPETITION LAW VIOLATIONS**

13 **(Plaintiffs and each Plaintiff Class and Sub-Class member against each Defendant)**

14 48. Plaintiffs incorporate paragraphs 1 through 47 of this complaint as if fully alleged
15 herein.

16 49. The failure to pay lawful overtime compensation and rest and meal period pay to
17 each Plaintiff Class member, and timely pay all pay due upon termination of employment to each
18 Plaintiff Sub-Class member, is an unlawful and unfair business practice within the meaning of
19 Business and Professions Code § 17200, et seq., including but not limited to a violation of the
20 applicable State of California Industrial Welfare Commission Wage Orders, regulations and
21 statutes, or is otherwise a practice which is otherwise unfair and unlawful, including that the
22 Defendants did not pay tax contributions on the accrued overtime compensation in the form of
23 FICA, Social Security, Medicare and Unemployment Insurance.

24 50. This cause of action is brought under Business and Professions Code §§ 17203
25 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
26 pursuant to Business and Professions Code § 17208, Plaintiffs and all Plaintiff Class members
27 seek restitution of overtime wages and rest and meal period pay owed and where applicable, the
28 Plaintiff Sub-Class seeks penalties which are provided under Labor Code § 203, where such

1 overtime wages and penalties were due each Plaintiff Class and Plaintiff Sub-Class member
2 during the Class Period, commencing four (4) years prior to filing of this complaint, according to
3 proof.

4 51. This cause of action is brought as a cumulative remedy as provided in Business
5 and Professions Code § 17205, and is intended as an alternative remedy for restitution for
6 Plaintiffs, each Plaintiff Class member, and each Plaintiff Sub-Class member for the time period,
7 or any portion thereof, commencing within four (4) years prior to the filing of this complaint, and
8 as the primary remedy for Plaintiffs, each Plaintiff Class member and each Plaintiff Sub-Class
9 member for the time period of the fourth year prior to the filing of this complaint, as such one
10 year time period exceeds the statute of limitations on statutory wage claims.

11 52. As a result of the Defendants' unlawful and unfair business practice of failing to
12 pay overtime and prompt payment of wages in violation of Labor Code §§ 201 and 202, each
13 Plaintiff Class member and Plaintiff Sub-Class member has suffered injury and is entitled to
14 restitution in an amount according to proof.

15 53. Further, Plaintiffs request the violations of the Defendants alleged herein be
16 enjoined, and other equitable relief as this court deems proper including an order for the
17 reclassification of Class Members to non-exempt status, and requiring and furnishing rest and
18 meal periods and requiring payment by the Defendants of tax contributions on the accrued
19 overtime compensation in the form of FICA, Social Security, Medicare, Unemployment
20 Insurance or other appropriate payments.

21 Wherefore, Plaintiffs, the Plaintiff Class, and the Plaintiff Sub-Class members request
22 relief as hereinafter prayed for.

23 VII.

24 PRAYER FOR RELIEF

25 **Wherefore, Plaintiffs, on their own behalf and on behalf of the Plaintiff Class and**
26 **Plaintiff Sub-Class, pray as follows:**

27 1. That the court determine this action may be maintained as a class action and
28 certify the Plaintiff Class and each Plaintiff Sub-Class;

1 2. That the court determine that the failure of the Defendants to pay overtime
2 compensation to the Plaintiffs and each Plaintiff Class member be adjudged and decreed to
3 violate the applicable IWC Wage Orders, regulations and statutes;

4 3. That the Defendants be ordered to pay and judgment be entered for overtime
5 wages for Plaintiffs and each Plaintiff Class member on the First Cause of Action, according to
6 proof;

7 4. That the Defendants be ordered to pay and judgment be entered for Labor Code
8 §203 penalties to each Plaintiff and Plaintiff Sub-Class member on the Second Cause of Action,
9 according to proof;

10 5. That the Defendants be ordered to pay and judgment be entered for meal period
11 wages on the Third Cause of Action, according to proof;

12 6. That the Defendants be ordered to pay and judgment be entered for rest period
13 wages on the Fourth Cause of Action, according to proof;

14 7. That the Defendants be found to have engaged in unfair competition in violation
15 of Business and Professions Code § 17200;

16 8. That the Defendants be ordered and enjoined to pay restitution to Plaintiffs, each
17 Plaintiff Class member, and each Plaintiff Sub-Class member due to the Defendants' unlawful
18 and unfair competition, including disgorgement of their wrongfully obtained profits, wrongfully
19 withheld wages according to proof, and interest thereon pursuant to Business and Professions
20 Code §§ 17203 and 17204, on the Sixth Cause of Action;

21 9. That Defendants be enjoined from further acts of unfair competition and
22 specifically from failing to pay overtime compensation and failing to provide rest and meal
23 periods to class members on the Sixth Cause of Action and to reclassify the Plaintiff Class
24 members to non-exempt;

25 10. That Plaintiffs, Plaintiff Class members, and Plaintiff Sub-Class members be
26 awarded Attorneys' fees and costs pursuant to statute, including but not limited to Labor Code §
27 1194 and Code of Civil Procedure § 1021.5;

28 11. Otherwise determine the appropriate remedy to compensate Plaintiffs, each


1 Plaintiff Class member, and each Plaintiff Sub-Class member as required to promote fairness and
2 justice, including but not limited to establishing procedures for compensation, compensation
3 amounts and fluid recovery if appropriate;

4 12. Prejudgment Interest; and

5 13. Any other relief as this court deems proper.

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7
8 COHELAN KHOURY & SINGER
9 LAW OFFICES OF MICHAEL P. SOUSA
10 Counsel for Plaintiffs

11 Dated: March 5, 2009

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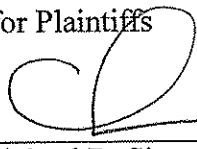
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

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