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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

6 Attorneys for Representative Plaintiff
7 and the Plaintiff Classes

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **C06-02857**

CW

11 BEVERLY GINTZ, individually, and on
12 behalf of all others similarly situated,

Case No.:

CLASS/COLLECTIVE ACTION

ADR

13 Plaintiffs,

14 vs.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

15 JACK IN THE BOX, INC., and DOES 1
16 through 25, inclusive,

Defendants

Demand for Jury Trial

17
18 Representative Plaintiff alleges as follows:

19
20 **PRELIMINARY STATEMENT**

21 1. This is a class action, seeking unpaid wages, including unpaid minimum wages,
22 overtime compensation and interest thereon, meal and rest period compensation, waiting time
23 penalties, liquidated damages and other penalties, injunctive and other equitable relief and reasonable
24 attorneys' fees and costs, under, *inter alia*, the Fair Labor Standards Act §§ 6 and 7, 29 U.S.C. §§
25 206 and 207, California Labor Code §§ 201-203, 226, 226.7, 512, 1174, 1194 and 1197, and CCP
26 § 1021.5, on behalf of Plaintiff and all other persons who are or have been employed during the
27 relevant time period by defendant JACK IN THE BOX, INC. in any non-exempt night shift position,
28 in any of its fast food restaurants within the State of California and/or the United States. The

1 Representative Plaintiff also seeks injunctive relief and restitution of all benefits JACK IN THE
2 BOX, INC. has enjoyed from its failure to pay compensation to class members under California
3 Business and Professions Code §§ 17200-17208.

4 2. The "California Class" period is designated as the time from April 27, 2002 through
5 the trial date, based upon the allegation that the violations of California's wage and hour laws, as
6 described more fully below, have been ongoing since that time. The "FLSA Class" period is
7 designated as the time from April 27, 2003 through the trial date, based upon JACK IN THE BOX's
8 willful and unlawful conduct, as detailed further in this Complaint. During each Class Period, JACK
9 IN THE BOX has maintained a consistent policy toward its non-exempt night-shift employees of
10 permitting, encouraging and/or requiring these workers to work off-the-clock, work through paid
11 and/or unpaid meal and/or rest "breaks" and work in excess of eight hours per day and/or forty hours
12 per week (without premium compensation therefor), in violation of state and/or federal laws. These
13 violations have further resulted in violations of state and/or federal minimum wage laws.

14 INTRODUCTION

15 3. The Fair Labor Standards Act of 1938, as amended (hereinafter referred to as "the
16 Act" or the "FLSA"), provides for minimum standards for both wages and overtime entitlement, and
17 details administrative procedures by which covered work time must be compensated. The enactment
18 of the provisions of the FLSA provided the Federal Courts with substantial authority to stamp out
19 abuses of child labor, equal pay, portal-to-portal activities as well as the minimum wage and
20 overtime pay provisions at issue in this Complaint.

21 4. According to Congressional findings, the existence of labor conditions detrimental
22 to the maintenance of the minimum standard of living engenders unfair commercial competition,
23 labor disputes, burdens in commerce and the free flow of goods in commerce and interferes with the
24 orderly and fair marketing of goods.

25 5. California's Industrial Welfare Commission Wage Orders and Labor Code provide
26 even more expansive protection to hourly workers, including, but not necessarily limited to,
27 entitlements to minimum wages, overtime pay for work performed beyond eight hours per day (as
28

1 well as 40 hours per week), substantial damages for the denial of rest and meal periods and various
2 penalties for failure to maintain and provide workers with accurate wage statements.

3 6. Both federal and California studies have linked long work hours to increased rates
4 of accident and injury and a loss of family cohesion when either or both parents are kept away from
5 home for extended periods of time, on either a daily or weekly basis.

6 7. Since its inception, JACK IN THE BOX has operated a large number of fast food
7 restaurants within the State of California and across the nation. In so doing, JACK IN THE BOX
8 has, in recent years alone, employed hundreds of thousands of individuals in non-exempt, night-shift
9 positions at its fast food facilities/locations.

10 8. Despite actual knowledge of these facts and legal mandates, JACK IN THE BOX has
11 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not
12 to pay minimum wages, premium (overtime) pay, "waiting time" penalties and/or compensation for
13 denied meal and/or rest periods to its non-exempt night-shift restaurant employees.

14 9. Representative Plaintiff is informed and believes and, based thereon, alleges that
15 officers of JACK IN THE BOX knew of these facts and legal mandates, yet, nonetheless, repeatedly
16 authorized and/or ratified the violation of the laws cited herein.

17 10. Despite JACK IN THE BOX's knowledge of the Plaintiff Classes' entitlement to
18 premium (overtime) pay, compensation in amounts equaling or exceeding the applicable minimum
19 wage, and meal and/or rest periods for all applicable work periods, JACK IN THE BOX failed to
20 provide same to members of the Plaintiff Classes, in violation of the FLSA and California State
21 statutes, California Industrial Welfare Commission Orders and Title 8 of the California Code of
22 Regulations. This action is brought to redress and end this long-time pattern of unlawful conduct.
23

24 JURISDICTION AND VENUE

25 11. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor
26 Standards Act of 1938 ("FLSA"), 29 U.S.C. §§201 et seq., including under 29 U.S.C. §§ 206, 207,
27 216 and 217. This Court also has jurisdiction in light of the existence of a controversy arising under
28 the laws of the United States (28 U.S.C. §1331) and supplemental jurisdiction to consider claims

1 arising under California state law (e.g., California Labor Code §§ 203, 226, 226.7, 510, 512, 1174,
2 1194, 1197 and IWC Wage Orders), pursuant to 28 U.S.C. §1367.

3 12. This Court also has jurisdiction over Representative Plaintiff's and Class Members'
4 claims for injunctive relief, and restitution of ill-gotten benefits derived from defendant JACK IN
5 THE BOX 's unlawful business practices under California Business & Professions Code §§ 17203
6 and 17204.

7 13. Venue as to each Defendant is proper in this Court pursuant to FLSA § 216(b) and
8 Code of Civil Procedure § 395(a). Defendant JACK IN THE BOX maintains facilities and offices
9 and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
10 service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff
11 and those similarly situated within the United States, the State of California and the County of
12 Alameda.

13
14 **PLAINTIFF**

15 14. Plaintiff Beverly D. Gintz (the "Representative Plaintiff") is a natural person, and
16 was, during a portion of the relevant time period identified herein, employed by defendant JACK IN
17 THE BOX as a non-exempt, night-shift employee, an employment position which was entitled and
18 continues to enjoy an entitlement to various conditions of employment such as a minimum wage,
19 overtime compensation and meal and/or rest periods.

20 15. In said position, the Representative Plaintiff was permitted to work and did work,
21 during the Class Period, shifts exceeding five hours without being afforded an opportunity to take
22 an uninterrupted, unrestricted meal period of not less than thirty (30) minutes and was frequently
23 permitted to work and did work four hours or a "major fraction" thereof, without being afforded the
24 opportunity to enjoy (net) ten minute rest periods. Specifically, JACK IN THE BOX engaged in the
25 systematic denial of meal and rest periods to Representative Plaintiff and Class Members whereby
26 Representative Plaintiff and Class Members, without waiver on their part, were consistently required
27 to work without such meal and rest breaks as a result of JACK IN THE BOX's corporate policies
28 of under-staffing each of its fast-food restaurants and restricting Class Members to the premises.

1 JACK IN THE BOX, INC. fast food restaurant(s), at any time since
2 April 27, 2002.

3 FLSA Class:

4 All persons who are/were employed by JACK IN THE BOX as non-
5 exempt employees and who worked the night-shift at any JACK IN
6 THE BOX, INC. fast food restaurant(s) in the United States, at any
7 time since April 27, 2003.

8 23. Defendants, their officers and directors are excluded from each of the Classes.

9 24. This action has been brought and may properly be maintained as a class action under
10 Federal Rule of Civil Procedure Rule 23 and/or a collective action under 29 U.S.C. § 216(b) because
11 there is a well-defined community of interest in the litigation and the proposed classes are easily
12 ascertainable.

13 a. Numerosity: A class action is the only available method for the fair and
14 efficient adjudication of this controversy. The members of the class are so
15 numerous that joinder of all members is impractical, if not impossible, insofar
16 as Representative Plaintiff is informed and believes and, on that basis, alleges
17 that the total number of Class Members exceeds one hundred thousand
18 individuals. Membership in the Plaintiff Classes will be determined upon
19 analysis of employee and payroll, among other, records maintained by JACK
20 IN THE BOX.

21 b. Commonality: The Representative Plaintiff and the Class Members share a
22 community of interests in that there are numerous common questions and
23 issues of fact and law which predominate over any questions and issues solely
24 affecting individual members, thereby making a class action superior to other
25 available methods for the fair and efficient adjudication of the controversy.
26 Consequently, class certification is proper under Federal Rule of Civil
27 Procedure Rule 23 and/or 29 U.S.C. § 216(b). These common questions
28 include, but are not necessarily limited to:

i. whether defendant JACK IN THE BOX engaged in a systematic
under-staffing of its fast-food restaurants which resulted in a denial
of meal and rest periods to the Class Members;

ii. whether defendant JACK IN THE BOX categorically prevented the
Class Members from leaving the premises, thereby denying them
unrestricted meal periods;

iii. whether defendant JACK IN THE BOX violated the FLSA and/or
California laws by failing to pay overtime compensation and/or
minimum wage levels to non-exempt night-shift employees who
worked in excess of 40 hours per week;

iv. whether defendant JACK IN THE BOX violated California Wage
Order No. 7-2001 and Labor Code § 510 by failing to pay overtime
compensation to JACK IN THE BOX's non-exempt night-shift
employees who worked in excess of 40 hours per week and/or eight

- 1 (8) hours a day;
- 2 v. whether defendant JACK IN THE BOX violated California Labor
- 3 Code §§ 226.7 and/or 512 by failing to consistently provide meal and
- 4 rest periods to its non-exempt night-shift employees;
- 5 vi. whether defendant JACK IN THE BOX's practice of requiring its
- 6 non-exempt night-shift employees to work during unpaid breaks
- 7 resulted in a violation of federal and/or state minimum wage and/or
- 8 overtime laws;
- 9 vii. whether defendant JACK IN THE BOX violated California Labor
- 10 Code § 1174 by failing to keep accurate records of its non-exempt
- 11 night-shift employees' hours of work;
- 12 viii. whether defendant JACK IN THE BOX violated California Labor
- 13 Code §§ 201-203 by failing to pay overtime wages due and owing at
- 14 the time that California Class Members' employment with Defendant
- 15 terminated;
- 16 ix. whether defendant JACK IN THE BOX violated California Labor
- 17 Code § 226 and/or the FLSA by failing to provide accurate itemized
- 18 wage statements to Class Members;
- 19 x. whether Representative Plaintiff and the California Class Members
- 20 are entitled to "waiting time" penalties/wages pursuant to California
- 21 Labor Code § 203;
- 22 xi. whether defendant JACK IN THE BOX violated California Business
- 23 and Professions Code § 17200 by failing to pay overtime
- 24 compensation to non-exempt night-shift employees who worked in
- 25 excess of forty (40) hours per week and/or eight (8) hours a day,
- 26 failing to pay minimum wages, failing to provide meal and/or rest
- 27 periods and by otherwise engaging in unfair, unlawful and/or
- 28 fraudulent business practices.
- 29 c. Typicality: The Representative Plaintiff's claims are typical of the claims of
- 30 the Plaintiff Classes. The Representative Plaintiff and all members of the
- 31 Classes sustained injuries and damages arising out of and caused by
- 32 defendant JACK IN THE BOX's common course of conduct in violation of
- 33 state and federal law, as alleged herein.
- 34 d. Superiority of Class Action: Since the damages suffered by individual Class
- 35 Members, while not inconsequential, may be relatively small, the expense
- 36 and burden of individual litigation by each member makes or may make it
- 37 impractical for Members of the Classes to seek redress individually for the
- 38 wrongful conduct alleged herein. Should separate actions be brought or be
- 39 required to be brought by each individual member of the Classes, the
- 40 resulting multiplicity of lawsuits would cause undue hardship and expense for
- 41 the Court and the litigants. The prosecution of separate actions would also
- 42 create a risk of inconsistent rulings, which might be dispositive of the
- 43 interests of other Class Members who are not parties to the adjudications
- 44 and/or may substantially impede their ability to adequately protect their
- 45 interests. Moreover, the Representative Plaintiff is informed and believes,
- 46 and based thereon alleges, that Defendant, in refusing to pay overtime to the

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Class Members, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of each class. Consequently, Class certification is proper under FRCP Rule 23 as well as 29 U.S.C. § 216(b).

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Classes, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Classes and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

25. As described herein, JACK IN THE BOX has, for years, knowingly failed to pay all compensation owing to those non-exempt restaurant employees within the class definitions identified above by failing to pay minimum wages and/or overtime wages due to said Class Members, and has violated other federal and state wage and hour laws as provided herein. JACK IN THE BOX has also failed to provide net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof (i.e., at least three and one-half hours) and/or uninterrupted, unrestricted meal periods of not less than thirty minutes for work shifts exceeding five hours to the California Class Members. JACK IN THE BOX has thereby enjoyed a significant competitive edge over other corporations within its industry.

26. Even upon termination or resignation of the employment of numerous Class Members, JACK IN THE BOX has declined to pay these wages, in blatant violation of the law (including, for members of the California Class, California Labor Code §§ 201 and/or 202).

27. Moreover, California Labor Code §§ 201 and 202 require defendant JACK IN THE BOX to pay all California Class Members all wages due, immediately upon discharge. California Labor Code § 203 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, for a period not to exceed 30 days of wages.

1 28. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
2 Members' entitlement to minimum wages, to premium (overtime) pay for excess hours worked and
3 to compensation for work performed "off-the-clock," JACK IN THE BOX failed to provide
4 Representative Plaintiff and members of the California Class with accurate semimonthly itemized
5 statements of the total number of hours worked by each, in violation of California Labor Code § 226.
6 In so doing, JACK IN THE BOX has not only failed to pay its workers the full amount of
7 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
8 unlawful conduct by concealing the magnitude (the full number of hours worked) and financial
9 impact of its wrongdoing.

10 29. Representative Plaintiff and all persons similarly situated in the Plaintiff Classes are
11 entitled to unpaid compensation, yet, to date, have not received such compensation despite the
12 termination of their employment with JACK IN THE BOX 's employ.

13 30. More than 30 days have passed since Representative Plaintiff and certain California
14 Class Members have left defendant JACK IN THE BOX 's employ.

15 31. As a consequence of defendant JACK IN THE BOX 's willful conduct in not paying
16 compensation for all hours worked, certain California Class Members are entitled to 30 days wages
17 as penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

18 32. As a direct and proximate result of JACK IN THE BOX 's unlawful conduct, as set
19 forth herein, Representative Plaintiff and Class Members have sustained damages, as described
20 above, including loss of earnings for unpaid minimum wages and unpaid hours of overtime worked
21 on behalf of Defendants, in an amount to be established at trial. As a further direct and proximate
22 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and many
23 California Class Members herein are entitled to recover damages for Defendant's meal and/or rest
24 period violations, "waiting time" penalties/wages (pursuant to California Labor Code § 203) and
25 penalties for failure to provide semimonthly statements of hours worked (pursuant to Labor Code
26 § 226), in amounts to be established at trial. As a further direct and proximate result of Defendant's
27 unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled
28 to recover costs and attorneys' fees, pursuant to 29 U.S.C. § 216(b), California Labor Code § 1194

1 and/or California Civil Code § 1021.5, among other authorities.

2
3 **FIRST CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY WAGES DUE**
5 **(INCLUDING MINIMUM AND OVERTIME WAGES)**
6 **(Violation of Fair Labor Standards Act and California Labor Code)**
7 **California and FLSA Classes**

8 33. Representative Plaintiff incorporates in this cause of action each and every allegation
9 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

10 34. At all relevant times hereto, JACK IN THE BOX has been, and is, an employer
11 engaged in commerce, as those terms are defined in 29 U.S.C. § 203(b), (d). As such, JACK IN
12 THE BOX employed Class Members as non-exempt night-shift employees who were engaged in
13 commerce, as those terms are defined in 29 U.S.C. §§ 203(b), (e), (g) and 29 U.S.C. § 207(a)(1).
14 At all times relevant hereto, JACK IN THE BOX has been an “enterprise engaged in commerce or
15 in the production of goods for commerce,” as defined under 29 U.S.C. § 203(s)(1).

16 35. Representative Plaintiff is informed and believes and, based thereon, alleges that
17 JACK IN THE BOX has permitted, encouraged and/or required members of the California and
18 FLSA Classes, as part of their employment, to work “off-the-clock,” work in excess of eight hours
19 per day and/or forty hours a week (without premium compensation therefor) and work through paid
20 and/or unpaid meal and/or rest “breaks,” in violation of state and/or federal laws such as:

- 21 a. 29 U.S.C. § 207(a)(1): “Except as otherwise provided in this section,
22 no employer shall employ any of his employees ... for a workweek longer
23 than forty hours unless such employee receives compensation for his
24 employment in excess of the hours above specified at a rate which is not less
25 than one and one-half times the regular rate at which he is employed.”
- 26 b. Labor Code § 510: “Any work in excess of eight hours in one workday
27 and any work in excess of 40 hours in any one workweek and the first eight
28 hours worked on the seventh day or work 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”
- c. Labor Code § 1198: “[t]he maximum hours of work and the standard
conditions of labor fixed by the commission shall be the maximum hours of
work and the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

1 36. Indeed, in the performance of their duties for Defendant, Class Members often did
2 work over eight hours a day and/or forty hours per week, yet they did not receive overtime
3 compensation required by the FLSA, 29 U.S.C. §§ 206 and 207 and/or by Labor Code § 510 for the
4 work, labor and services they provided to defendant JACK IN THE BOX . The precise number of
5 hours will be proven at trial.

6 37. Violations of these statutes have further resulted in violations of state and/or federal
7 minimum wage laws. These laws provide:

8 a. 29 U.S.C. § 206(a): Every employer shall pay to each of his
9 employees who in any workweek is engaged in commerce or in the
10 production of goods for commerce, or is employed in an enterprise engaged
11 in commerce or in the production of goods for commerce, wages at the
12 following rates:

13 (1) except as otherwise provided in this section, not less than \$4.25
14 an hour during the period ending on September 30, 1996, not less
15 than \$4.75 an hour during the year beginning on October 1, 1996, and
16 not less than \$5.15 an hour beginning September 1, 1997; . . .

17 b. IWC Wage Order 7-2001(4)(A): Every employer shall pay to each
18 employee wages . . . not less than six dollars and seventy-five cents (\$6.75)
19 per hour for all hours worked, effective January 1, 2002 . . .

20 c. Labor Code § 1194: Notwithstanding any agreement to work for a lesser
21 wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in
23 a civil action the unpaid balance of the full amount of this minimum wage or
24 overtime compensation, including interest thereon, reasonable attorney's fees,
25 and costs of suit.

26 d. Labor Code § 1197: The minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment
28 of a less wage than the minimum so fixed is unlawful.

38. Defendant's violations of the FLSA were willful.

39. Although this action has been brought and may properly be maintained as a class
action under California Code of Civil Procedure § 382 and/or Federal Rule of Civil Procedure, Rule
23, the Representative Plaintiff proposes to take appropriate proceedings to have all FLSA Class
Members aggrieved by Defendant's unlawful conduct notified of the pendency of this action and join
this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the
Court.

1 45. By failing to consistently provide uninterrupted and unrestricted meal periods and to
2 provide uninterrupted rest periods to its non-exempt night-shift restaurant employees, Defendant
3 violated California Labor Code §§ 226.7 and/or 512, and §§ (11) and (12) of the applicable IWC
4 Wage Orders.

5 46. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
6 the Representative Plaintiff and the Class Members have sustained damages, including loss of
7 compensation/wages, in an amount to be established at trial. As a further direct and proximate result
8 of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Class
9 Members are entitled to recover various penalties, in an amount to be established at trial, as well as
10 costs and attorneys' fees, pursuant to statute.

11
12 **THIRD CAUSE OF ACTION**
13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
14 **(California Labor Code §§ 226, 1174)**
15 **California Class Only**

16 47. Representative Plaintiff incorporates in this cause of action each and every allegation
17 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

18 48. California Labor Code § 226(a) provides:

19 Each employer shall semimonthly, or at the time of each payment of wages, furnish
20 each of his or her employees either as a detachable part of the check, draft or voucher
21 paying the employee's wages, or separately when wages are paid by personal check
22 or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2)
23 total number of hours worked by each employee whose compensation is based on an
24 hourly wage; (3) all deductions; provided, that all deductions made on written orders
25 of the employee may be aggregated and shown as one item; (4) net wages earned; (5)
26 the inclusive date of the period for which the employee is paid; (6) the name of the
27 employee and his or her social security number; and (7) the name and address of the
28 legal entity which is the employer.

29 49. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code
30 Regs. § 11010 et. seq.).

31 50. Moreover, California Labor Code § 226(e) provides:

32 An employee suffering injury as a result of a knowing and intentional failure by an
33 employer to comply with subdivision (a) is entitled to recover the greater of all actual
34 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs

1 and one hundred dollars (\$100) per employee for each violation in a subsequent pay
2 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is
entitled to an award of costs and reasonable attorney's fees.

3 51. Finally, California Labor Code § 1174 provides:

4 Every person employing labor in this state shall: (d) Keep, at a central location in the
5 state... payroll records showing the hours worked daily by and the wages paid to ...
6 employees These records shall be kept in accordance with rules established for
this purpose by the commission, but in any case shall be kept on file for not less than
two years.

7 52. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees
8 under this section on behalf of herself and the Class Members.

9 53. Defendant JACK IN THE BOX failed to provide timely, accurate itemized wage
10 statements to Representative Plaintiff and the Class Members in accordance with Labor Code §
11 226(a) and the IWC Wage Orders. None of the statements provided by Defendant has accurately
12 reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class
13 Members.

14
15 **FOURTH CAUSE OF ACTION**
16 **UNFAIR BUSINESS PRACTICES**
(California Business & Professions Code §§ 17200-17208)
17 **California Class Only**

18 54. Representative Plaintiff incorporates in this cause of action each and every allegation
19 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

20 55. The Representative Plaintiff further brings this cause of action on behalf of the
21 general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as
22 complained of herein, and to compel the payment of restitution by Defendant as a result of the unfair,
23 unlawful and fraudulent business practices described herein.

24 56. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
25 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
26 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
27 cited herein in violation of, *inter alia*, California's minimum wage, overtime, meal and/or rest
28 period, record keeping and "waiting time" laws.

1 57. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
2 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
3 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
4 set forth in California Business & Professions Code §§ 17200-17208.

5 58. Defendant JACK IN THE BOX has clearly established a policy of accepting a certain
6 amount of collateral damage, as represented by the damages to the Representative Plaintiff and the
7 California Class herein alleged, as incidental to its business operations, rather than accept the
8 alternative costs of full compliance with fair, lawful and honest business practices ordinarily borne
9 by responsible competitors of Defendant and as set forth in legislation and the judicial record.

10 59. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
11 the Representative Plaintiff and the California Class Members have sustained damages, including
12 loss of earnings/wages, in an amount to be established at trial, and are entitled to restitution in such
13 amount.

14
15 **RELIEF SOUGHT**

16 **WHEREFORE**, the Representative Plaintiff, on behalf of herself and the proposed Plaintiff
17 Classes, prays for judgment and the following specific relief against Defendant, as follows:

18 1. For an Order certifying the proposed Plaintiff Classes and/or any other appropriate
19 subclass(es) under FRCP Rule 23, 29 U.S.C. § 216 and/or Code of Civil Procedure § 382;

20 2. That the Court declare, adjudge and decree that defendant JACK IN THE BOX
21 violated the overtime and minimum wage provisions of the FLSA, the California Labor Code and
22 the Industrial Wage Commission Wage Orders as to the Representative Plaintiff and the Plaintiff
23 Classes;

24 3. That the Court declare, adjudge and decree that Defendant's violations of its legal
25 duties under the FLSA were willful.

26 4. That the Court declare, adjudge and decree that a) the Representative Plaintiff and
27 the Class Members were at all times relevant hereto, and are, entitled to be paid overtime for work
28 beyond 8 hours per day and/or 40 hours per a week; and b) the amounts to which Representative

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1 Plaintiff and the FLSA Class Members are entitled is to be doubled as liquidated damages and issued
2 as an award thereto;

3 5. That the Court declare, adjudge and decree that defendant JACK IN THE BOX
4 violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders for willful
5 failure to provide meal periods (including second meal periods) and/or rest periods to California
6 Class Members;

7 6. That the Court declare, adjudge and decree that defendant JACK IN THE BOX
8 violated the record keeping provisions of California Labor Code §§ 226(a) and 1174(d) and Section
9 7 of the Wage Orders as to Representative Plaintiff and the California Class Members, and for
10 willful failure to provide accurate semimonthly itemized statements thereto;

11 7. That the Court declare, adjudge and decree that defendant JACK IN THE BOX
12 violated California Labor Code §§ 201-203 for willful failure to pay all compensation owed at the
13 time of termination of employment to Representative Plaintiff and some California Class Members;

14 8. That the Court declare, adjudge and decree that defendant JACK IN THE BOX
15 violated California Business and Professions Code § 17200 et. seq. by failing to pay Representative
16 Plaintiff and California Class Members minimum wages and/or overtime compensation, meal and
17 rest period compensation and “waiting time” penalties and/or by failing to provide accurate itemized
18 statements;

19 9. That the Court make an award to Representative Plaintiff and members of the
20 Plaintiff Classes of damages for the amount of unpaid overtime compensation, including interest
21 thereon, and penalties in an amount to be proven at trial;

22 10. That the Court make an award to Representative Plaintiff and members of the
23 Plaintiff Classes of damages for the amount of unpaid minimum wages, including interest thereon,
24 and penalties to be proven at trial;

25 11. That the Court make an award to the Representative Plaintiff and members of the
26 California Class of one (1) hour of pay at each employee’s regular rate of compensation for each
27 workday that a meal period was not provided and one (1) hour of pay at each employee’s regular rate
28 of compensation for each workday that a rest period was not provided.

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