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ALAMEDA COUNTY

SEP 17 2015

CLERK OF THE SUPERIOR COURT

By Cicell Johnson
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SUPERIOR COURT OF CALIFORNIA
BY AND FOR THE COUNTY OF ALAMEDA

NANCY STOUT, on behalf of herself and all
others similarly situated,

Plaintiffs,

vs.

EINSTEIN NOAH RESTAURANT GROUP,
INC., a Delaware corporation doing business in
California; and DOES 1 through 10, inclusive,

Defendants.

Case No.: **RG15786192**

CLASS ACTION

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

- (1) Failure to Pay Wages For All Hours Worked, Including Minimum Wage (Cal. Lab. Code §§ 1194, 1197, and 1197.1)
- (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510, 1198);
- (3) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (4) Violation of Unfair Business Practices Act (Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff NANCY STOUT (“Plaintiff”), by and through her attorneys, brings this action
2 on behalf of herself, and all others similarly situated, (hereinafter “Class Members”), against
3 EINSTEIN NOAH RESTAURANT GROUP, INC. and DOES 1 through 10, inclusive
4 (“Defendants” or “EINSTEIN”), and complains and alleges the following upon personal
5 knowledge as to her own experiences, and based upon information and belief as to all other
6 matters:

7 **NATURE OF ACTION**

8 1. Plaintiff brings this class action against Defendants to recover compensation for:
9 time spent working off-the-clock and Defendants’ failure to provide accurate itemized wage
10 statements showing the start date of the pay period to which each respective wage statement
11 corresponds. Plaintiff also alleges that these acts, which violate the California Labor Code,
12 constitute predicate unlawful and unfair business practices in violation of the California Unfair
13 Competition Laws.
14

15 **JURISDICTION AND VENUE**

16 2. Venue as to each Defendant is proper in this judicial district, pursuant to the Code
17 of Civil Procedure § 395.¹ Defendants conduct business and commit Labor Code violations in
18 Alameda County. The unlawful acts alleged have a direct effect on Plaintiff and those similarly
19 situated within the State of California and within Alameda County. Upon information and belief,
20 Plaintiff alleges Defendants employ numerous Class Members in Alameda County, and various
21 other counties in the State of California, and maintain a regional office in said county.

22 3. Furthermore, there is an ongoing case with similar but not identical causes of
23 action pending in this Court.

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28 ¹ Unless otherwise noted, all statutory references are to California statutes and regulations.

1 **THE PARTIES**

2 **A. The Plaintiff**

3 4. Plaintiff NANCY STOUT is a resident of Solano County, California, and is
4 employed by Defendants in Contra Costa County as a non-exempt Assistant Manager, or similar
5 position. Plaintiff began her employment with Defendants around August 2014.

6 5. Plaintiff is paid bi-weekly through a direct deposit into her bank account and is
7 not provided with a wage statement unless she specifically requests it. Furthermore, Plaintiff's
8 wage statements only include the end date of the pay period to which the respective wage
9 statements correspond; there is no start date included on Plaintiff's wage statements when said
10 statements are received from Defendants.

11 6. Plaintiff was instructed by Defendants to regularly arrive at Defendants'
12 restaurant location(s) fifteen (15) minutes before her scheduled work shift, but not to clock in
13 until her actual scheduled shift time. While Plaintiff was performing work for Defendants during
14 these 15 minutes, she was not provided with any compensation for these 15-minute intervals
15 even though such time constituted "hours worked." Furthermore, upon information and belief,
16 Plaintiff worked more hours than those reflected on her wage statements. Therefore, Plaintiff
17 performed "off-the-clock" work for Defendants for which she was never paid. This harm and
18 Defendants' conduct is continuing.

19 **B. The Defendants**

20 7. Plaintiff is informed and believes, and based thereon alleges, EINSTEIN NOAH
21 RESTAURANT GROUP, INC., is a Delaware corporation, and an employer whose employees
22 are engaged throughout the State of California as well as the various states of the United States
23 of America. Further, Defendant EINSTEIN NOAH RESTAURANT GROUP, INC. has
24 conducted business in California, and was the employer of Plaintiff and the Class Members
25 during the Class Period.
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1 8. Plaintiff is informed and believes, and based thereon alleges, that EINSTEIN
2 NOAH RESTAURANT GROUP, INC. is a bagel and coffee restaurant chain with locations in
3 California and throughout the United States.

4 9. Plaintiff is informed and believes, and based thereon alleges, EINSTEIN NOAH
5 RESTAURANT GROUP, INC. operates over fifty restaurant locations in the State of California.
6 At each of its California locations, EINSTEIN NOAH RESTAURANT GROUP, INC. employs
7 Assistant Manager and Team Member employees. As a matter of company policy and practice,
8 Defendant EINSTEIN NOAH RESTAURANT GROUP, INC. does not issue wage statements to
9 its employees, and when it does, the wage statements do not include the start date of respective
10 pay periods.

11 10. Furthermore, as a matter of company practice, Defendant EINSTEIN NOAH
12 RESTAURANT GROUP, INC. requires its employees work “off-the-clock” for at least fifteen
13 minutes each shift and does not compensate its employees for this and other “off-the-clock”
14 work. Thus, EINSTEIN NOAH RESTAURANT GROUP, INC. owes minimum and/or overtime
15 wages to its employees.
16

17 11. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
19 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
20 § 474. Plaintiff is informed and believes, and based on that belief alleges, each of the
21 Defendants designated as a DOE is legally responsible in some manner for the unlawful acts
22 alleged herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
23 names and capacities of the Defendants designated as DOES when those identities become
24 known.

25 12. Plaintiff is informed and believes, and based on that belief alleges, each
26 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
27 carried out a joint venture, business plan or policy in all respects pertinent hereto, and the act of
28 each Defendant are legally attributable to the other Defendants.

1 **FACTUAL ALLEGATIONS**

2 13. At all times during the liability period, Defendants have conducted business by
3 operating a bagel and coffee restaurant chain in Alameda County and elsewhere within
4 California and the United States. Among other positions, Defendants staff Assistant Managers to
5 assist in the overall management of its breakfast fast-casual restaurants. Upon information and
6 belief, Defendants also staff Team Members to service its restaurant customers.

7 14. During all, or a portion, of the Class Period, Plaintiff and each Class Member was
8 employed by Defendants in the State of California.

9 15. Plaintiff and each Class Member was a non-exempt hourly employee covered
10 under one or more Industrial Welfare Commission (“IWC”) Wage Orders, including 5-2001,
11 enumerated in Code Regs. Tit. 8, § 11050 (IWC Wage Order 5-2001).

12 16. During the Class Period, Defendants, as a matter of company policy and practice,
13 required, and continue to require, Plaintiff and other Class Members arrive at Defendants’
14 premises fifteen minutes before their respective scheduled shifts but do not allow the employees
15 to clock-in until their actual scheduled shift time. During these fifteen minutes, Defendants
16 require Plaintiff and certain Class members to complete job responsibilities and tasks. As a
17 result, during the Class Period, Plaintiff and other Class Members were not adequately
18 compensated for the fifteen minutes of work performed before their scheduled shift time.

19 17. Upon information and belief, during the Class Period, Defendants, as a matter of
20 company practice, alter Plaintiff’s and other Class Members’ timesheets to reflect fewer hours
21 than actually worked by the respective employees.

22 18. During the Class Period, Defendants had, and continue to have, a regular and
23 systematic business practice that causes Plaintiff and the Class to work more than the time
24 reflected on the employees’ wage records. At the least, Plaintiff and certain members of the
25 Class “clock-in” fifteen minutes after the actual time at which they begin respective job duties
26 and responsibilities.
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1 is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-wide
2 recovery based on the allegations set forth in this Complaint.

3 25. This action has been brought and may be maintained as a class action pursuant to
4 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed Class is easily ascertainable through the records Defendants are
6 required to retain.

7 26. Numerosity. The members of the Class are so numerous that individual joinder of
8 all of them as Plaintiffs is impracticable. While the exact number of the Class Members is
9 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
10 are more than 500 Class Members.

11 27. Commonality. Common questions of law and fact exist as to all Class Members
12 and predominate over any questions that affect only individual members of the Class. These
13 common questions include, but are not limited to:

- 14 a. Whether Defendants violated the California Labor Code and Wage Orders as
15 a result of the allegations described in this complaint;
- 16 b. Whether Defendants violated the California Labor Code and Wage Orders by
17 not compensating Plaintiff and the Class members for all time worked;
- 18 c. Whether Defendants violated the California Labor Code and Wage Orders by
19 compensating Plaintiff and the Class members at rates below the required
20 minimum wage;
- 21 d. Whether Defendants violated the California Labor Code and Wage Orders by
22 not providing its employees wage statements;
- 23 e. Whether Defendants violated the California Labor Code and Wage Orders by
24 not including the starting pay period date on wage statements issued to
25 Plaintiff and the Class;
- 26 f. Whether Defendants are liable for statutory and civil penalties pursuant to the
27 California Labor Code and Wage Order No. 5-2001;
28

- 1 g. Whether Defendants violated the UCL by committing an unlawful or unfair
2 business act or practice;
- 3 h. What is the amount of restitution owed by Defendants attributable to their
4 violation of the Unfair Competition Law by failure to pay overtime
5 compensation rates for shifts lasting more than eight hours in a workday or
6 forty hours in a workweek;
- 7 i. What is the amount of restitution owed by Defendants attributable to their
8 violation of the Unfair Competition Law by failure to pay compensation for
9 employees' early arrival and performance of job duties and responsibilities
10 prior to their scheduled shift time;
- 11 j. What is the appropriateness and nature of relief to Plaintiff and each Class
12 Member;
- 13 k. What is the extent of liability of each Defendant, including DOE defendants,
14 to Plaintiff and each Class Member?
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16 28. Typicality. Plaintiff's claims are typical of the claims of the other members of the
17 Class. First, Plaintiff and other members of the Class were subject to the same policy and/or
18 practice of being required to arrive at work prior to the scheduled shift time and performing job
19 duties and responsibilities during said time. Second, Plaintiff and other members of Class were
20 also subject to the same policy of not receiving wage statements and/or receiving wage
21 statements that did not include the start date of the relevant pay period.

22 29. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
23 of the Class. Plaintiff has no interest adverse to the interests of absent Class Members. Plaintiff
24 is represented by attorneys who have substantial class action experience in wage-and-hour and
25 class action law.

26 30. Superiority. A class action is superior to other available means for fair and
27 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
28 Court. Class action treatment will allow a large number of similarly situated persons to

1 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
2 unnecessary duplication of effort and expense that numerous individual actions would require.
3 The damages suffered by each Class Member are relatively small in the context of a class action
4 analysis, and the expense and burden of individual litigation would make it extremely difficult or
5 impossible for the individual Class Members to seek and obtain individual relief. A class action
6 will serve an important public interest by permitting such individuals to effectively pursue
7 recovery of the sums owed to them. Further, class litigation prevents the potential for
8 inconsistent or contradictory judgments raised by individual litigation.

9
10 **FIRST CAUSE OF ACTION**

11 **(By Plaintiff and the Off-the-Clock Sub-Class against all Defendants)**

12 **Failure to Pay Wages For All Hours Worked, Including Minimum Wage, in Violation of**
13 **Lab. Code §§ 204, 1197, and IWC Wage Order 5-2001**

14 31. Plaintiff re-alleges and incorporates herein by reference each and every allegation
15 in the preceding paragraphs.

16 32. Plaintiff is informed and believes, and on that basis alleges, at all relevant times,
17 Defendants employed workers in the public housekeeping industry, as defined in the applicable
18 IWC Wage Order 5-2001.

19 33. At all relevant times, Plaintiff and all other members of the Off-the-Clock Sub-
20 Class were employees of Defendants covered by the California Labor Code and IWC Wage
21 Order 5-2001.

22 34. Labor Code Section 1197 provides that the minimum wage for employees fixed
23 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage
24 than the established minimum is unlawful.

25 35. IWC Wage Order 5-2001, establishes an employer's duty to pay the established
26 minimum wage for all hours worked:

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1 Every employer shall pay to each employee, on the established
2 payday for the period involved, not less than the applicable
3 minimum wage for all hours worked in the payroll period,
4 whether the remuneration is measured by time, piece,
5 commission, or otherwise.

6 8 C.C.R. 110504(A).

7 36. Labor Code Section 204 provides, in part, “all wages, . . . , earned by any person in
8 any employment are due and payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays.” Lab. Code § 204(a).

10 37. Plaintiff is informed and believes, during the relevant time period, Plaintiff and
11 other members of the Off-the-Clock Sub-Class were undercompensated by Defendants’ failure to
12 pay wages for all hours worked, including minimum wages. Defendants failed to pay for work
13 that was performed off-the-clock due to Defendants’ policy of requiring employees to arrive
14 fifteen minutes before their scheduled shifts to perform their job responsibilities and duties
15 and/or due to Defendants’ policy of altering employee time records.

16 38. During the relevant time period, Defendants regularly failed to pay minimum
17 wages to Plaintiff and Off-the-Clock Sub-Class members for time spent working off the clock, as
18 explained throughout this Complaint. Defendants’ failure to pay Plaintiff and Off-the-Clock Sub-
19 Class members the minimum wages as required violates Labor Code § 1197 because by not
20 paying a minimum wage, Defendants are paying a lesser wage than the established minimum.

21 39. During the relevant time period, in violation of Labor Code Section 204, by
22 requiring Plaintiff and other Off-the-Clock Sub-Class members perform their job duties off-the-
23 clock, Defendants knowingly and willfully refused to perform their obligations to compensate
24 their employees for all wages earned.

25 40. Pursuant to Labor Code Section 218, Plaintiff, on behalf of herself and those
26 similarly situated seeks to recover from Defendants the wages and any penalty due to her and
27 those similarly situated.

28 41. Pursuant to Labor Code § 1194, Plaintiff and the Off-the-Clock Sub-Class
members are entitled to recover the unpaid balance of their minimum wage compensation as well

1 as interest, costs, and reasonable attorneys' fees. In addition, Plaintiff and the Off-the-Clock Sub-
2 Class members are entitled to liquidated damages in an amount equal to the wages unlawfully
3 unpaid and interest thereon pursuant to Labor Code § 1194.2.

4 42. As a direct and proximate result of Defendants' conduct in violation of Labor
5 Code Section 204, Plaintiff and the Off-the-Clock Sub-Class members have suffered and
6 continue to suffer, losses related to the use and enjoyment of wages and lost interest on such
7 wages as damages in amounts according to proof at trial.

8 43. Pursuant to Labor Code Section 218.5, Plaintiff, on behalf of herself and those
9 similarly situated, requests recovery of reasonable attorneys' fees and costs.

10 **SECOND CAUSE OF ACTION**

11 **(By Plaintiff and the Off-the-Clock Sub-Class against all Defendants)**

12 **Failure to Pay Overtime Wages in Violation of Lab. Code §§ 510 and 1198 and IWC Wage**

13 **Order 5-2001**

14 44. Plaintiff re-alleges and incorporates herein by reference each and every allegation
15 in the preceding paragraphs.

16 45. At all relevant times, IWC Wage Order 5-2001 required Defendants to pay
17 Plaintiff and all other members of the Off-the-Clock Sub-Class overtime compensation at
18 prescribed hourly overtime rates for all hours worked in excess of eight (8) hours in a workday
19 or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a
20 day is entitled to overtime compensation at rate of two times his/her regular rate of pay.
21

22 46. Labor Code Section 510 codifies the right to overtime compensation at the rate of
23 one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in
24 a workday or forty (40) hours in a work week and to overtime compensation at twice the regular
25 rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8)
26 hours in a day on the seventh day of work in a particular work week.
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1 53. At all relevant times, Plaintiff and the Inaccurate Wage Statement Sub-Class
2 members were employees of Defendants covered by the California Labor Code.

3 54. In relevant parts, Labor Code § 226(a) provides:

4 Every employer shall, semimonthly or at the time of each
5 payment of wages, furnish each of his employees, either as a
6 detachable part of the check, draft, or voucher paying the
7 employee's wages, or separately when wages are paid by personal
8 check or cash, an accurate itemized statement in writing showing
9 (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all
11 deductions, provided that all deductions made on written orders of
12 the employee may be aggregated and shown as one item, (5) net
13 wages earned, **(6) the inclusive dates of the period for which
14 the employee is paid**, (7) the name of the employee and only the
15 last four digits of his or her social security number or an employee
16 identification number other than a social security number, (8) the
17 name and address of the legal entity that is the employer and, if
18 the employer is a farm labor contractor, [. . .] and (9) all
19 applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the
21 employee and, beginning July 1, 2013, if the employer is a
22 temporary services employer as defined in Section 201.3, the rate
23 of pay and the total hours worked for each temporary services
24 assignment.

25 (emphasis added).

26 55. Labor Code § 226(e) provides that an employee is entitled to recover \$50.00 for
27 the initial pay period in which a violation of Section 226 occurs and \$100.00 for each subsequent
28 pay period, as well as an award of costs and reasonable attorneys' fees, for all pay periods in
which the employer knowingly and intentionally failed to provide accurate itemized statements
to the employee causing the employee to suffer injury.

 56. At all relevant times, Defendants had a practice of not furnishing Plaintiff and the
Inaccurate Wage Statement Sub-Class members with accurate itemized written statements
showing the information required by Labor Code Section 226(a).

 57. At all relevant times, when Plaintiff and certain Inaccurate Wage Statement Sub-
Class members received itemized wage statements, such statements did not include the inclusive

1 dates of the period for which the employee was paid because there was no starting date listed on
2 the statements provided by Defendants.

3 58. Plaintiff is informed and believes, and thereon alleges, at all relevant times,
4 Defendants knowingly and intentionally failed to furnish and continue to knowingly and
5 intentionally fail to furnish Plaintiff and the Inaccurate Wage Statement Sub-Class members with
6 accurate itemized statements showing the pay period for which the employee was paid, as
7 required by Labor Code § 226(a)(6).

8 59. Defendants' failure to provide Plaintiff and members of the Inaccurate Wage
9 Statement Sub-Class with accurate itemized wage statement during the Class Period has caused
10 Plaintiff and members of the Inaccurate Wage Statement Sub-Class to incur economic damages
11 in that they are not aware if they are owed compensation for certain work days.

12 60. As a result of Defendants' issuance of inaccurate itemized wage statements to
13 Plaintiff and certain members of the Inaccurate Wage Statement Sub-Class in violation of Labor
14 Code § 226(a), Plaintiff and the Inaccurate Wage Statement Sub-Class are each entitled to
15 recover penalties pursuant to Labor Code § 226(e).
16

17 **FOURTH CAUSE OF ACTION**

18 **(By Plaintiff and the Class against all Defendants)**

19 **Unlawful, Fraudulent, or Unfair Business Practices in Violation of Bus. & Prof. Code §§**
20 **17200 *et seq.***

21 61. Plaintiff re-alleges and incorporates herein by reference each and every allegation
22 in the preceding paragraphs.

23 62. Business and Professions Code §§ 17200 *et seq.*, prohibits acts of "unfair
24 competition," which includes "any unlawful, unfair, or fraudulent business act or practice." Bus.
25 & Prof. Code § 17200.

26 63. Defendants' act and practices are unlawful business practices because they violate
27 Labor Code §§ 204, 226, 510, 512, 1194, 1197, 1197.1, and 1198 and regulations of working
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1 conditions in the public housekeeping industry enumerated in IWC Wage Order 5-2001, Code
2 Regs. Tit. 8, § 11050, as set forth throughout this Complaint.

3 64. Additionally, throughout the Class Period, Defendants' business acts and/or
4 practices were also unfair. Defendants' conduct is immoral, unethical, oppressive, unscrupulous,
5 or substantially injurious to Plaintiff and Class. The legitimate utility of Defendants' conduct is
6 outweighed by the harm to Plaintiff and other Class Members. Defendants' conduct undermines
7 and violates the stated spirit and policies underlying the Labor Code and related Wage Orders
8 and California employment laws alleged herein.

9 65. As a direct result of Defendants' unlawful and/or unfair business acts and/or
10 practices, Plaintiff and Class Members suffered injury in fact and lost money or property,
11 because they lost the wages which Defendants should have paid them for arriving and working
12 fifteen minutes prior to their scheduled shifts and/or for other off-the-clock work. Plaintiff and
13 other members of the Class have been deprived of their rights to wages due as alleged herein and
14 of their rights to regularly receive accurate itemized wage statements. Meanwhile, Defendants
15 have saved labor costs, unjustly enriching themselves.

16 66. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks
17 to: enjoin further unlawful and/or unfair business acts and/or practices by Defendants; obtain
18 restitutionary disgorgement of all wages and other monies owed and belonging to Plaintiff and
19 other Class Members as a result of such practices, including interest thereon; and all other relief
20 allowed under Business & Professions Code §§ 17200 *et seq.*

21 67. Plaintiff and other members of the Class are entitled to recover reasonable
22 attorneys' fees pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit
23 doctrine, and/or the common fund doctrine.

24
25 **PRAYER**


26 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
27 relief and judgment against Defendants, jointly and severally, as follows:

28 A. For certification of this action as a class action;

- 1 B. For appointment of Plaintiff as the representative of the Class;
- 2 C. For appointment of counsel for Plaintiff as Class Counsel;
- 3 D. For general damages, according to proof;
- 4 E. For unpaid wages pursuant to Labor Code §§ 204, 218, and/or 1194;
- 5 F. For prejudgment interest;
- 6 G. For penalties pursuant to Labor Code §§ 558 and/or 226;
- 7 H. For reasonable attorneys' fees and costs of suit pursuant to Code of Civil Procedure
- 8 §§ 1021.5, Labor Code § 218.5, and/or the common fund or substantial benefit
- 9 theories;
- 10 I. For declaratory relief regarding Defendants' violations of the Labor Code; and,
- 11 J. For such other relief the Court deems just and proper.
- 12

13 **CLARK & TREGLIO**

14
15 Dated: September 14, 2015


16 By: 
17 R. Craig Clark
18 James M. Treglio
19 *Attorneys for Plaintiff and the Putative Class*

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, individually, and on behalf of all other similarly situated current and former
22 employees of Einstein Noah Restaurant Group, Inc., employed in the state of California, hereby
23 demands a jury trial on issues triable to a jury.

24 **CLARK & TREGLIO**

25 Dated: September 14, 2015

26 By: 
27 R. Craig Clark
28 James M. Treglio
Attorneys for Plaintiff and the Putative Class