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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RAYFIELD SPIRES, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

v.

PANORAMA MEADOWS NURSING
CENTER, LP, a Limited Partnership; and
DOES 1-50, Inclusive,

Defendant(s).

Case No. **21 ST CV 19567**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;

*[additional causes of action continued on
next page]*

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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 24 2021

Sherril R. Carter, Executive Officer/Clerk of Court

- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, et seq.; and
- 10) BREACH OF ORAL CONTRACT

DEMAND FOR JURY TRIAL

Plaintiff RAYFIELD SPIRES (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant PANORAMA MEADOWS NURSING CENTER, LP (“DEFENDANT” or “DEFENDANTS”) is a California limited partnership and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT operates a healthcare center in the County of Los Angeles.

3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from September 2018 to October 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis.

1 4. PLAINTIFF brings this Class Action on behalf of himself and a California
2 class, defined as all individuals who are or previously were employed by DEFENDANT
3 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at
4 any time between during the period beginning 4 years prior to the filing of the complaint
5 and ending on the date as determined by the Court (the “CALIFORNIA CLASS
6 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
7 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended. DEFENDANT instructed PLAINTIFF to work off the clock in order to avoid working overtime. From time to time, PLAINTIFF'S supervisors contacted PLAINTIFF after his shift ended via phone to discuss work-related matters. PLAINTIFF was also often interrupted by work assignments during his breaks. Indeed there were many days where PLAINTIFF did not even receive a partial meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business records.

1 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
2 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
3 other CALIFORNIA CLASS Members for the actual time these employees worked each
4 day, including overtime hours. As a result DEFENDANT was able to and did in fact
5 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
6 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
7 paying these employees the applicable overtime compensation for overtime worked and
8 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
9 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
10 working without their time being accurately recorded and without compensation at the
11 applicable overtime rates.

12 10. The mutability of the timekeeping system also allowed DEFENDANTS to
13 alter employee time records by recording fictitious thirty (30) minute meal breaks in
14 DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF
15 and other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal
16 break when in fact the employees were not at all times provided an off-duty meal break.
17 This practice is a direct result of DEFENDANTS' uniform policy and practice of
18 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or
19 otherwise compensate them for missed meal breaks

20 11. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also from time to time unable to take off duty
22 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members were required to perform work as ordered by
24 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
25 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
26 CLASS Members with a second off-duty meal period each workday in which these
27 employees were required by DEFENDANT to work ten (10) hours of work. From time to
28 time, when a meal break was provided, PLAINTIFF was required to remain on

1 DEFENDANT’S premises, on-call and on-duty, and was interrupted with work.

2 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
3 breaks without additional compensation and in accordance with DEFENDANTS’ strict
4 corporate policy and practice

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

18 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not
19 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANTS also
20 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
21 complete and accurate wage statements which failed to show, among other things, the
22 time worked, including, work performed in excess of eight (8) hours in a workday and/or
23 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
24 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
25 or her employees with an accurate itemized wage statement in writing showing, among
26 other things, gross wages earned and all applicable hourly rates in effect during the pay
27 period and the corresponding amount of time worked at each hourly rate. Aside, from the
28 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF

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

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

16 15. DEFENDANTS as a matter of corporate policy, practice and procedure,
17 intentionally, knowingly and systematically failed to reimburse and indemnify the
18 PLAINTIFF and the other CALIFORNIA CLASS Members for required business
19 expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in
20 direct consequence of discharging their duties on behalf of DEFENDANTS. Under
21 California Labor Code Section 2802, employers are required to indemnify employees for
22 all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
23 2802 expressly states that "an employer shall indemnify his or her employee for all
24 necessary expenditures or losses incurred by the employee in direct consequence of the
25 discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."
28

1 16. In the course of their employment, PLAINTIFF and other CALIFORNIA
2 CLASS Members as a business expense, were required by DEFENDANTS to use their
3 own personal cellular phones as a result of and in furtherance of their job duties as
4 employees for DEFENDANTS but were not reimbursed or indemnified by
5 DEFENDANTS for the cost associated with the use of their personal cellular phones for
6 DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS
7 Members were required by DEFENDANTS to use their personal cell phones to for work
8 related issues, including using various messaging apps. As a result, in the course of their
9 employment with DEFENDANTS the PLAINTIFF and other members of the
10 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
11 were not limited to, costs related to the use of their personal cellular phones all on behalf
12 of and for the benefit of DEFENDANTS.

13 17. By reason of this uniform conduct applicable to PLAINTIFF and all
14 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition
15 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
16 et seq.(the "UCL"), by engaging in a company-wide policy and procedure which failed to
17 accurately calculate and record all missed meal and rest periods by PLAINTIFF and
18 other CALIFORNIA CLASS Members. The proper recording of these employees'
19 missed meal and rest breaks is the DEFENDANTS' burden. As a result of
20 DEFENDANTS' intentional disregard of the obligation to meet this burden,
21 DEFENDANTS failed to properly calculate and/or pay all required compensation for
22 work performed by the members of the CALIFORNIA CLASS and violated the
23 California Labor Code and regulations promulgated thereunder as herein alleged.

24 18. Specifically as to PLAINTIFF's pay, PLAINTIFF was from time to time
25 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
26 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
27 for more than five (5) hours during a shift without receiving an off-duty meal break.
28 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period

1 each workday in which she was required by DEFENDANT to work ten (10) hours of
2 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
3 compensation and in accordance with DEFENDANTS' strict corporate policy and
4 practice. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum wage
5 and overtime compensation still owed to him or any penalty wages owed to them under
6 Cal. Lab. Code § 203. Further, specifically as to PLAINTIFF, during PLAINTIFF's
7 employment with DEFENDANT in 2020, PLAINTIFF contracted with DEFENDANTS
8 which entitled PLAINTIFF to an increased rate of pay for working during the Covid-19
9 pandemic. Moreover, the oral agreement provided that DEFENDANTS would pay
10 PLAINTIFF increased compensation categorized as Covid and/or Hazard Pay. Pursuant
11 to the oral agreement, PLAINTIFF performed work for DEFENDANTS and at all times
12 stood ready to perform all the obligations to DEFENDANTS which PLAINTIFF
13 undertook in the oral agreement. However, DEFENDANTS breached the oral agreement
14 by failing, neglecting, and refusing to compensate PLAINTIFF in accordance with the
15 oral agreement. As a direct and foreseeable result of DEFENDANTS' breach of the oral
16 agreement, PLAINTIFF has suffered monetary damages. The amount in controversy for
17 PLAINTIFF individually does not exceed the sum or value of \$75,000.

18 **JURISDICTION AND VENUE**

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

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

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

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA CLASS will create the risk of:
- 4 i. Inconsistent or varying adjudications with respect to individual members
5 of the CALIFORNIA CLASS which would establish incompatible
6 standards of conduct for the parties opposing the CALIFORNIA CLASS;
7 and/or;
- 8 ii. Adjudication with respect to individual members of the CALIFORNIA
9 CLASS which would as a practical matter be dispositive of interests of the
10 other members not party to the adjudication or substantially impair or
11 impede their ability to protect their interests.
- 12 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
13 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
14 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
15 DEFENDANTS uniformly failed to pay all wages due, including the correct
16 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
17 as required by law;
- 18 i. With respect to the First Cause of Action, the final relief on behalf of the
19 CALIFORNIA CLASS sought does not relate exclusively to restitution
20 because through this claim PLAINTIFF seek declaratory relief holding that
21 the DEFENDANTS' policy and practices constitute unfair competition,
22 along with declaratory relief, injunctive relief, and incidental equitable
23 relief as may be necessary to prevent and remedy the conduct declared to
24 constitute unfair competition;
- 25 c. Common questions of law and fact exist as to the members of the CALIFORNIA
26 CLASS, with respect to the practices and violations of California law as listed
27 above, and predominate over any question affecting only individual CALIFORNIA
28

1 CLASS Members, and a Class Action is superior to other available methods for the
2 fair and efficient adjudication of the controversy, including consideration of:

3 i. The interests of the members of the CALIFORNIA CLASS in individually
4 controlling the prosecution or defense of separate actions in that the
5 substantial expense of individual actions will be avoided to recover the
6 relatively small amount of economic losses sustained by the individual
7 CALIFORNIA CLASS Members when compared to the substantial
8 expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

1 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANTS; and

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

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

12 **THE CALIFORNIA LABOR SUB-CLASS**

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

21 30. DEFENDANTS, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for all time
25 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even
26 though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work
27 and permitted or suffered to permit this overtime work. DEFENDANTS have uniformly denied
28 these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages at the

1 correct amount to which these employees are entitled in order to unfairly cheat the competition
2 and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
3 LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS
4 PERIOD should be adjusted accordingly.

5 31. DEFENDANTS maintain records from which the Court can ascertain and identify
6 by name and job title, each of DEFENDANTS' employees who have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
9 additional job titles of similarly situated employees when they have been identified.

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

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

- 14 a. Whether DEFENDANTS unlawfully failed to pay minimum and overtime
15 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
16 violation of the California Labor Code and California regulations and the
17 applicable California Wage Order;
- 18 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
19 overtime compensation for overtime worked under the overtime pay requirements
20 of California law;
- 21 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
23 thirty (30) minute meal breaks and rest periods;
- 24 d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- 26 e. Whether DEFENDANTS have engaged in unfair competition by the above-listed
27 conduct;

- 1 f. The proper measure of damages and penalties owed to the members of the
2 CALIFORNIA LABOR SUB-CLASS; and
3 g. Whether DEFENDANTS' conduct was willful.

4 34. DEFENDANTS, as a matter of company policy, practice and procedure, failed to
5 accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide
6 accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-
7 CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an
8 hourly basis by DEFENDANTS according to uniform and systematic company procedures as
9 alleged herein above. This business practice was uniformly applied to each and every member of
10 the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
11 adjudicated on a class-wide basis.

12 35. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
13 under California law by:

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

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

9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is
11 impracticable and the disposition of their claims as a class will benefit the parties
12 and the Court;

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

17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
20 employee paid on an hourly basis and paid additional non-discretionary incentive
21 wages who was subjected to the DEFENDANTS' practice and policy which failed
22 to pay the correct rate of overtime wages due to the CALIFORNIA LABOR SUB-
23 CLASS for all overtime worked. PLAINTIFF sustained economic injury as a result
24 of DEFENDANTS' employment practices. PLAINTIFF and the members of the
25 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed
26 by the same unlawful, deceptive, unfair and pervasive pattern of misconduct
27 engaged in by DEFENDANTS; and
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1 d. The representative PLAINTIFF will fairly and adequately represent and protect the
2 interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who
3 are competent and experienced in Class Action litigation. There are no material
4 conflicts between the claims of the representative PLAINTIFF and the members of
5 the CALIFORNIA LABOR SUB-CLASS that would make class certification
6 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
7 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

10 a. Without class certification and determination of declaratory, injunctive, statutory
11 and other legal questions within the class format, prosecution of separate actions
12 by individual members of the CALIFORNIA LABOR SUB-CLASS will create the
13 risk of:

14 i. Inconsistent or varying adjudications with respect to individual members
15 of the CALIFORNIA LABOR SUB-CLASS which would establish
16 incompatible standards of conduct for the parties opposing the
17 CALIFORNIA LABOR SUB-CLASS; or

18 ii. Adjudication with respect to individual members of the CALIFORNIA
19 LABOR SUB-CLASS which would as a practical matter be dispositive of
20 interests of the other members not party to the adjudication or substantially
21 impair or impede their ability to protect their interests.

22 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
23 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-
24 CLASS, making appropriate class-wide relief with respect to the CALIFORNIA
25 LABOR SUB-CLASS as a whole in that DEFENDANTS uniformly failed to pay
26 all wages due, including the correct overtime rate, for all overtime worked by the
27 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
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1 c. Common questions of law and fact predominate as to the members of the
2 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
3 of California Law as listed above, and predominate over any question affecting
4 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
5 Action is superior to other available methods for the fair and efficient adjudication
6 of the controversy, including consideration of:

7 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
8 in individually controlling the prosecution or defense of separate actions in
9 that the substantial expense of individual actions will be avoided to recover
10 the relatively small amount of economic losses sustained by the individual
11 CALIFORNIA LABOR SUB-CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this litigation;

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

15 1. Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUB-CLASS, which
17 would establish incompatible standards of conduct for the
18 DEFENDANTS; and/or,

19 2. Adjudications with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS would as a practical matter
21 be dispositive of the interests of the other members not parties to
22 the adjudication or substantially impair or impede their ability to
23 protect their interests;

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

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

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

- 10 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
11 CLASS predominate over any question affecting only individual CALIFORNIA
12 LABOR SUB-CLASS Members;
- 13 b. A Class Action is superior to any other available method for the fair and efficient
14 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
15 CLASS because in the context of employment litigation a substantial number of
16 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
17 their rights individually out of fear of retaliation or adverse impact on their
18 employment;
- 19 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it
20 is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
21 before the Court;
- 22 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
23 not be able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 e. There is a community of interest in obtaining appropriate legal and equitable relief
26 for the acts of unfair competition, statutory violations and other improprieties, and
27 in obtaining adequate compensation for the damages and injuries which
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1 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
2 CLASS;

- 3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANTS are sufficient to adequately compensate the members of the
5 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 6 g. DEFENDANTS have acted or refused to act on grounds generally applicable to the
7 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
8 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 9 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
10 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
11 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
12 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
13 PERIOD; and
- 14 i. Class treatment provides manageable judicial treatment calculated to bring an
15 efficient and rapid conclusion to all litigation of all wage and hour related claims
16 arising out of the conduct of DEFENDANTS as to the members of the
17 CALIFORNIA LABOR SUB-CLASS.

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

25 40. DEFENDANTS are a "person" as that term is defined under Cal. Bus. And Prof.
26 Code § 17021.

27 41. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
2 as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair competition may
4 be enjoined in any court of competent jurisdiction. The court may make such orders or
5 judgments, including the appointment of a receiver, as may be necessary to prevent the
6 use or employment by any person of any practice which constitutes unfair competition, as
7 defined in this chapter, or as may be necessary to restore to any person in interest any
8 money or property, real or personal, which may have been acquired by means of such
9 unfair competition. (Cal. Bus. & Prof. Code § 17203).

10 42. By the conduct alleged herein, DEFENDANTS has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198,
14 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

22 44. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
23 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
24 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime worked,
25 and failed to provide the required amount of overtime compensation, pursuant to the applicable
26 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
27 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
28 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

45. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

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

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

11 48. PLAINTIFF further demands on behalf of himself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
13 not timely provided as required by law.

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

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

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**

18 **ALL Defendants)**

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

22 55. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
25 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 56. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
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1 57. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a wage less than
3 the minimum so fixed is unlawful.

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

6 59. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
8 of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to
9 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS.

11 60. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
15 pay.

16 61. In committing these violations of the California Labor Code, DEFENDANTS
17 inaccurately calculated the correct time worked and consequently underpaid the actual time
18 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
19 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
20 benefits in violation of the California Labor Code, the Industrial Welfare Commission
21 requirements and other applicable laws and regulations.

22 62. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
24 the correct minimum wage compensation for their time worked for DEFENDANTS.

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

28 64. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

4 65. DEFENDANTS knew or should have known that PLAINTIFFS and the other
5 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
6 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
8 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
10 minimum wages for their time worked.

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

19 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well
21 as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
22 California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
24 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
25 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
26 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
27 SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and
28 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
are entitled to seek and recover statutory costs.

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THIRD CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against
ALL Defendants)**

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

69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked, including overtime work.

74. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that failed to accurately record overtime worked
2 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and denied
3 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS for overtime worked, including, the work performed in excess of eight (8) hours in
5 a workday and/or forty (40) hours in any workweek.

6 75. In committing these violations of the California Labor Code, DEFENDANT acted
7 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
8 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
9 laws and regulations.

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

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

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

24 79. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
26 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
27 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28 CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed

1 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS'
2 business records and witnessed by employees.

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

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

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

23 83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
25 interest, statutory costs, as well as the assessment of any statutory penalties against
26 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
27 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
28 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'
conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be

1 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
2 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as
3 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 86. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable

1 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
2 workday that a meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

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

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

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

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

- 1 i. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 94. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
4 wages owed to them and/or missed meal and rest breaks, DEFENDANTS also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements which failed to show, among other things, the correct time worked, including,
7 work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
8 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides
9 that every employer shall furnish each of his or her employees with an accurate itemized wage
10 statement in writing showing, among other things, gross wages earned and all applicable hourly
11 rates in effect during the pay period and the corresponding amount of time worked at each hourly
12 rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to
13 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
14 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the
15 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
16 § 226.

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

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SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal. Lab. Code §§201, 202, 203)

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

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

97. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

101. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §§ 2802)

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

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

105. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,

1 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
2 their personal cell phones to respond to work related issues. DEFENDANTS' uniform policy,
3 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
4 CLASS members for expenses resulting from using their personal cellular phones for
5 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
6 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by
7 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
8 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
9 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
10 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
11 laws and regulations of California.

12 107. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
13 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
14 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
15 the statutory rate and costs under Cal. Lab. Code § 2802.

16 **NINTH CAUSE OF ACTION**
17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
18 **[Cal. Lab. Code §§ 2698 et seq.]**
19 **(Alleged by PLAINTIFF against all Defendants)**

20 108. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 109. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
24 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
25 fundamentally a law enforcement action designed to protect the public and not to benefit private
26 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
27 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,
28 the California Legislature specified that "it was ... in the public interest to allow aggrieved
employees, acting as private attorneys general to recover civil penalties for Labor Code violations
..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

1 110. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to herself
4 and all individuals who are or previously were employed by DEFENDANTS in California during
5 the time period of May 19, 2020 until the present (the "AGGRIEVED EMPLOYEES").

6 111. On May 19, 2021, PLAINTIFF gave written notice by certified mail to the Labor
7 and Workforce Development Agency (the "Agency") and the employer of the specific
8 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
9 **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting
10 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
11 to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
12 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
13 EMPLOYEES as herein defined.

14 112. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
16 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
17 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
18 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
19 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
20 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
21 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
22 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
23 Code Private Attorney General Act of 2004 as the representative of the State of California for the
24 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 113. Some or all of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.

1 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
2 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
3 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

4 **TENTH CAUSE OF ACTION**
5 **BREACH OF ORAL CONTRACT**

6 **(Alleged by PLAINTIFF against all Defendants)**

7 114. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 115. During PLAINTIFF’s employment with DEFENDANTS in 2020, PLAINTIFF
10 entered into an oral agreement with DEFENDANTS which entitled PLAINTIFF to an increased rate
11 of pay for working during the Covid-19 pandemic.

12 116. Moreover, the oral agreement provided that DEFENDANTS would pay PLAINTIFF
13 increased compensation for Covid and/or Hazard Pay.

14 117. Pursuant to the oral agreement, PLAINTIFF performed work for DEFENDANTS
15 and at all times stood ready to perform all the obligations to DEFENDANTS which PLAINTIFF
16 undertook in the oral agreement.

17 118. However, DEFENDANTS breached the oral agreement by failing, neglecting, and
18 refusing to compensate PLAINTIFF in accordance with the oral agreement.

19 119. As a direct and foreseeable result of DEFENDANTS’ breach of the oral agreement,
20 PLAINTIFF has suffered monetary damages.

21 **PRAYER FOR RELIEF**

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

24 1. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the First Cause of Action asserted by the
26 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc.
27 § 382;
28 b. An order temporarily, preliminarily and permanently enjoining and

1 restraining DEFENDANTS from engaging in similar unlawful conduct as
2 set forth herein;

- 3 c. An order requiring DEFENDANTS to pay all wages and all sums
4 unlawfully withheld from compensation due to PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS; and
6 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid
7 fund for restitution of the sums incidental to DEFENDANTS' violations due
8 to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 10 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
11 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-
12 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
13 b. Compensatory damages, according to proof at trial, including compensatory
14 damages for minimum wages and overtime compensation and unreimbursed
15 expenses due PLAINTIFF and the other members of the CALIFORNIA
16 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
17 CLASS PERIOD plus interest thereon at the statutory rate;
18 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
19 512 and the applicable IWC Wage Order;
20 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay
21 period in which a violation occurs and one hundred dollars (\$100) per
22 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
23 subsequent pay period, not exceeding an aggregate penalty of four thousand
24 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §
25 226; and
26 e. The wages of all terminated employees from the CALIFORNIA LABOR
27 SUB-CLASS as a penalty from the due date thereof at the same rate until
28 paid or until an action therefore is commenced, in accordance with Cal. Lab.

Code § 203.

f. Penalties pursuant to Cal. Lab. Code §1198.5.

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

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and

b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

4. On behalf of PLAINTIFF for the Tenth cause of action:

A) Compensatory damages, according to proof at trial;

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

5. On behalf of the Tenth Cause of Action:

a. Compensatory damages according to proof;

b. Interest according to law;

c. Costs of suit; and

d. Any further relief the court deems just and equitable.

6. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §2802.

1 Dated: May 24, 2021

2 **BARVIÉ LAW, APC**

3 By 
4 _____
5 NICOLE BARVIÉ
6 Attorneys for Plaintiff(s)

7 **DEMAND FOR A JURY TRIAL**

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

9 Dated: May 24, 2021

10 **BARVIÉ LAW, APC**

11 By 
12 _____
13 NICOLE BARVIÉ
14 Attorneys for Plaintiff(s)

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EXHIBIT 1



Client #36301

March 18, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

**PANORAMA MEADOWS NURSING
CENTER, LP**
c/o CT CORPORATION SYSTEM
818 WEST 7TH STREET, SUITE 930
LOS ANGELES CA 90017

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Rayfield Spires (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against **Panorama Meadows Nursing Center, LP**, a California limited partnership (“Defendants”). Plaintiff was employed by Defendants in California between September 2018 and October 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as minimum and overtime wages. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendants also failed to pay Plaintiff’s and other aggrieved employees’ minimum wages and overtime and meal and rest break premiums. Defendants also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees, including all non-exempt and exempt employees of Defendant. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for Rayfield Spires

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047; Facsimile: (858) 404-9203

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292; Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

RAYFIELD SPIRES, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

PANORAMA MEADOWS NURSING
CENTER, LP, a Limited Partnership; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.; and
- 10) BREACH OF ORAL CONTRACT

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant PANORAMA MEADOWS NURSING CENTER, LP
7 (“DEFENDANT” or “DEFENDANTS”) is a California limited partnership and at all relevant
8 times mentioned herein conducted and continues to conduct substantial and regular business in
9 California.

10 2. DEFENDANT operates a healthcare center in the County of Los Angeles.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from September
13 2018 to October 2020. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between
18 during the period beginning 4 years prior to the filing of the complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked, including
26 overtime worked. DEFENDANT’s uniform policy and practice alleged herein is an unlawful,
27 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain
28 wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF
and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct

1 by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
2 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
3 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time to time,
26 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
27 paying them for all the time they were under DEFENDANT'S control. Specifically,
28 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to

1 be PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift
2 ended. DEFENDATN instructed PLAINTIFF to work off the clock in order to avoid working
3 overtime. From time to time, PLAINTIFF'S supervisors contacted PLAINTIFF after his shift
4 ended via phone to discuss work-related matters. PLAINTIFF was also often interrupted by
5 work assignments during his breaks. Indeed there were many days where PLAINTIFF did not
6 even receive a partial meal break. As a result, the PLAINTIFF and other CALIFORNIA
7 CLASS Members, from time to time, forfeited minimum wage and overtime compensation by
8 working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice
10 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
11 evidenced by DEFENDANT'S business records.

12 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
13 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
14 CALIFORNIA CLASS Members for the actual time these employees worked each day,
15 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
16 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and
17 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
18 applicable overtime compensation for overtime worked and to avoid paying these employees for
19 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
20 time to time, forfeited time worked by working without their time being accurately recorded and
21 without compensation at the applicable overtime rates.

22 10. The mutability of the timekeeping system also allowed DEFENDANTS to alter
23 employee time records by recording fictitious thirty (30) minute meal breaks in
24 DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF and other
25 CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break when in fact
26 the employees were not at all times provided an off-duty meal break. This practice is a direct
27 result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted
28

1 thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal
2 breaks

3 11. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
5 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
7 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
8 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
9 second off-duty meal period each workday in which these employees were required by
10 DEFENDANTS to work ten (10) hours of work. From time to time, when a meal break was
11 provided, PLAINTIFF was required to remain on DEFENDANT'S premises, on-call and on-
12 duty, and was interrupted with work. PLAINTIFF and the other CALIFORNIA CLASS
13 Members therefore forfeited meal breaks without additional compensation and in accordance
14 with DEFENDANTS' strict corporate policy and practice

15 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
16 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
17 without being provided ten (10) minute rest periods. Further, these employees were denied their
18 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
19 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
20 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
21 minutes for some shifts worked of ten (10) hours or more. When rest breaks were provided by
22 DEFENDANT, PLAINTIFF was required to remain on DEFENDANT'S premises, on-call and
23 on-duty during the breaks. PLAINTIFF and other CALIFORNIA CLASS Members were also
24 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper
26 rest periods by DEFENDANTS and DEFENDANTS' managers.

27 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
28 wages owed to them, and/or missed meal and rest breaks, DEFENDANTS also failed to provide

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

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

24 15. DEFENDANTS as a matter of corporate policy, practice and procedure,
25 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
26 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
27 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
28 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,

1 employers are required to indemnify employees for all expenses incurred in the course and
2 scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 16. In the course of their employment, PLAINTIFF and other CALIFORNIA
8 CLASS Members as a business expense, were required by DEFENDANTS to use their own
9 personal cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
11 associated with the use of their personal cellular phones for DEFENDANTS' benefit.
12 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
13 DEFENDANTS to use their personal cell phones to for work related issues, including using
14 various messaging apps. As a result, in the course of their employment with DEFENDANTS the
15 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
16 expenses which included, but were not limited to, costs related to the use of their personal
17 cellular phones all on behalf of and for the benefit of DEFENDANTS.

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et
21 seq.(the "UCL"), by engaging in a company-wide policy and procedure which failed to
22 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
23 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and
24 rest breaks is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard
25 of the obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all
26 required compensation for work performed by the members of the CALIFORNIA CLASS and
27 violated the California Labor Code and regulations promulgated thereunder as herein alleged.
28

18. Specifically as to PLAINTIFF's pay, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which she was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum wage and overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab. Code § 203. Further, specifically as to PLAINTIFF, during PLAINTIFF's employment with DEFENDANTS in 2020, PLAINTIFF contracted with DEFENDANTS which entitled PLAINTIFF to an increased rate of pay for working during the Covid-19 pandemic. Moreover, the oral agreement provided that DEFENDANTS would pay PLAINTIFF increased compensation categorized as Covid and/or Hazard Pay. Pursuant to the oral agreement, PLAINTIFF performed work for DEFENDANTS and at all times stood ready to perform all the obligations to DEFENDANTS which PLAINTIFF undertook in the oral agreement. However, DEFENDANTS breached the oral agreement by failing, neglecting, and refusing to compensate PLAINTIFF in accordance with the oral agreement. As a direct and foreseeable result of DEFENDANTS' breach of the oral agreement, PLAINTIFF has suffered monetary damages. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

20. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times

maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

THE CALIFORNIA CLASS

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Defendant Princeton and/or Defendant Rockport in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

23. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

24. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to pay all wages due the CALIFORNIA CLASS for all minimum wages and overtime worked.
- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;

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

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

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

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

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of interests of
12 the other members not party to the adjudication or substantially impair or
13 impede their ability to protect their interests.

14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
15 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
16 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
17 DEFENDANTS uniformly failed to pay all wages due, including the correct
18 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
19 as required by law;

20 i. With respect to the First Cause of Action, the final relief on behalf of the
21 CALIFORNIA CLASS sought does not relate exclusively to restitution
22 because through this claim PLAINTIFF seek declaratory relief holding
23 that the DEFENDANTS' policy and practices constitute unfair
24 competition, along with declaratory relief, injunctive relief, and incidental
25 equitable relief as may be necessary to prevent and remedy the conduct
26 declared to constitute unfair competition;

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the controversy,
4 including consideration of:

5 i. The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to
8 recover the relatively small amount of economic losses sustained by the
9 individual CALIFORNIA CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this
11 litigation;

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

14 1. Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA CLASS, which would establish
16 incompatible standards of conduct for the DEFENDANTS;
17 and/or;

18 2. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be dispositive
20 of the interests of the other members not parties to the
21 adjudication or substantially impair or impede their ability to
22 protect their interests;

23 iii. In the context of wage litigation, because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting their
25 legal rights out of fear of retaliation by DEFENDANTS, which may
26 adversely affect an individual's job with DEFENDANTS or with a
27 subsequent employer, the Class Action is the only means to assert their
28 claims through a representative; and

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

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

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

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANTS are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
5 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
6 with respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANTS; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANTS as to the members of the
12 CALIFORNIA CLASS.

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for all time
3 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
4 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
5 this work and permitted or suffered to permit this overtime work. DEFENDANTS have
6 uniformly denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime
7 wages at the correct amount to which these employees are entitled in order to unfairly cheat the
8 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
9 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR
10 SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

- c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- d. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANTS' conduct was willful.

34. DEFENDANTS, as a matter of company policy, practice and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANTS according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

35. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the

correct overtime pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194 & § 1198;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing time worked at by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt

1 employee paid on an hourly basis and paid additional non-discretionary incentive
2 wages who was subjected to the DEFENDANTS' practice and policy which
3 failed to pay the correct rate of overtime wages due to the CALIFORNIA
4 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
5 injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
8 of misconduct engaged in by DEFENDANTS; and

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

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
22 the risk of:
- 23 i. Inconsistent or varying adjudications with respect to individual members
24 of the CALIFORNIA LABOR SUB-CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA LABOR SUB-CLASS; or
- 27 ii. Adjudication with respect to individual members of the CALIFORNIA
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

1 interests of the other members not party to the adjudication or
2 substantially impair or impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR
5 SUB-CLASS, making appropriate class-wide relief with respect to the
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
7 uniformly failed to pay all wages due, including the correct overtime rate, for all
8 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
9 required by law;

10 c. Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
14 Class Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 i. The interests of the members of the CALIFORNIA LABOR SUB-
17 CLASS in individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA LABOR SUB-CLASS
21 Members when compared to the substantial expense and burden of
22 individual prosecution of this litigation;

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

25 1. Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA LABOR SUB-CLASS, which
27 would establish incompatible standards of conduct for the
28 DEFENDANTS; and/or,

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
2 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
3 CLASS before the Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
5 not be able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 e. There is a community of interest in obtaining appropriate legal and equitable
8 relief for the acts of unfair competition, statutory violations and other
9 improprieties, and in obtaining adequate compensation for the damages and
10 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA
11 LABOR SUB-CLASS;
- 12 f. There is a community of interest in ensuring that the combined assets of
13 DEFENDANTS are sufficient to adequately compensate the members of the
14 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
16 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 18 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
20 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
21 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
22 PERIOD; and
- 23 i. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims
25 arising out of the conduct of DEFENDANTS as to the members of the
26 CALIFORNIA LABOR SUB-CLASS.

27
28 **FIRST CAUSE OF ACTION**

1 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

13 Any person who engages, has engaged, or proposes to engage in unfair competition may
14 be enjoined in any court of competent jurisdiction. The court may make such orders or
15 judgments, including the appointment of a receiver, as may be necessary to prevent the
16 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

17 42. By the conduct alleged herein, DEFENDANTS has engaged and continues to
18 engage in a business practice which violates California law, including but not limited to, the
19 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
20 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198,
21 and 2802 for which this Court should issue declaratory and other equitable relief pursuant to
22 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
23 constitute unfair competition, including restitution of wages wrongfully withheld.

24 43. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
25 unfair in that these practices violated public policy, were immoral, unethical, oppressive
26 unscrupulous or substantially injurious to employees, and were without valid justification or
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section
28

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 44. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
6 worked, and failed to provide the required amount of overtime compensation, pursuant to the
7 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
8 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
9 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
10 withheld.

11 45. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
12 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

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

18 47. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
20 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
21 for each workday in which a second off-duty meal period was not timely provided for each ten
22 (10) hours of work.

23 48. PLAINTIFF further demands on behalf of himself and on behalf of each
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
25 was not timely provided as required by law.

26 49. By and through the unlawful and unfair business practices described herein,
27 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,

1 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANTS so as to allow
3 DEFENDANTS to unfairly compete against competitors who comply with the law.

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

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

14 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
17 engaging in any unlawful and unfair business practices in the future.

18 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
20 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.
21 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
22 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
23 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
24 engage in these unlawful and unfair business practices.

25
26 **SECOND CAUSE OF ACTION**

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

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

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

55. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

59. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

61. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the correct time worked and consequently underpaid the actual time

1 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

5 62. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
7 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

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

11 64. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true time they worked, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained
16 according to proof at trial.

17 65. DEFENDANTS knew or should have known that PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
19 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
21 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
23 correct minimum wages for their time worked.

24 66. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
26 time worked and provide them with requisite compensation, DEFENDANTS acted and continue
27 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
28 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal
rights, or the consequences to them, and with the despicable intent of depriving them of their

1 property and legal rights, and otherwise causing them injury in order to increase company
2 profits at the expense of these employees.

3 67. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
5 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided
6 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
7 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
8 who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
9 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
10 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA
11 LABOR SUB-CLASS Members. DEFENDANTS' conduct as alleged herein was willful,
12 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
13 CLASS Members are entitled to seek and recover statutory costs.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION** 16 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

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

22 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor
24 Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to
25 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
26 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
27 hours in any workweek.

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

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

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

9 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANTS to work for
11 DEFENDANTS and were not paid for all the time they worked, including overtime work.

12 74. DEFENDANTS' uniform pattern of unlawful wage and hour practices
13 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
14 whole, as a result of implementing a uniform policy and practice that failed to accurately record
15 overtime worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, and denied accurate compensation to PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the work performed in
18 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

19 75. In committing these violations of the California Labor Code, DEFENDANT acted
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
21 the California Labor Code, the Industrial Welfare Commission requirements and other
22 applicable laws and regulations.

23 76. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
25 receive full compensation for all overtime worked.

26 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
to a valid collective bargaining agreement that would preclude the causes of action contained

1 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable,
3 non-waivable rights provided by the State of California.

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

7 79. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
8 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was
9 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
10 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS
12 failed to accurately record and pay using the applicable overtime rate as evidenced by
13 DEFENDANTS' business records and witnessed by employees.

14 80. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
15 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
16 CLASS for the true time they worked, PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
18 injury in amounts which are presently unknown to them and which will be ascertained
19 according to proof at trial.

20 81. DEFENDANTS knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
22 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
23 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
24 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to
25 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
26 applicable overtime rate.

27 82. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
all time worked and provide them with the requisite overtime compensation, DEFENDANTS
acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
2 disregard for their legal rights, or the consequences to them, and with the despicable intent of
3 depriving them of their property and legal rights, and otherwise causing them injury in order to
4 increase company profits at the expense of these employees.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

18 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

24 85. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide
25 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
26 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code.
27 The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
28 MEMBERS did not prevent these employees from being relieved of all of their duties for the
legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF

1 and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty
2 by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
3 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
4 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
5 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANTS' strict corporate policy and practice.

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

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

16
17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

19 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

25 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
26 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
27 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
28 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
(10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS** 17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and** 19 **against all Defendants)**

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

23 93. Cal. Labor Code § 226 provides that an employer must furnish employees withan
24 "accurate itemized" statement in writing showing:

- 25 a. Gross wages earned;
- 26 b. Total hours worked by the employee, except for any employee whose
27 compensation is solely based on a salary and who is exempt from payment of
28 overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission;

- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

94. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct time worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

20 97. Cal. Lab. Code § 200 provides that:

21 As used in this article:(a) "Wages" includes all amounts for labor performed by
22 employees of every description, whether the amount is fixed or ascertained by the
23 standard of time, task, piece, Commission basis, or other method of calculation.
24 (b) "Labor" includes labor, work, or service whether rendered or performed under
25 contract, subcontract, partnership, station plan, or other agreement if the labor to
26 be paid for is performed personally by the person demanding payment.

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

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

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72
3 hours thereafter, unless the employee has given 72 hours previous notice of his or
4 her intention to quit, in which case the employee is entitled to his or her wages at
5 the time of quitting. Notwithstanding any other provision of law, an employee
6 who quits without providing a 72-hour notice shall be entitled to receive payment
by mail if he or she so requests and designates a mailing address. The date of the
mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

7 100. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
8 SUB-CLASS Members' employment contract.

9 101. Cal. Lab. Code § 203 provides:

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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

24 **(Cal. Lab. Code §§ 2802)**

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

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

4 105. Cal. Lab. Code § 2802 provides, in relevant part, that:

5 An employer shall indemnify his or her employee for all necessary expenditures
6 or losses incurred by the employee in direct consequence of the discharge of his
7 or her duties, or of his or her obedience to the directions of the employer, even
8 though unlawful, unless the employee, at the time of obeying the directions,
9 believed them to be unlawful.

10 106. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
11 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
12 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
13 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
14 CLASS members for expenses which included, but were not limited to, costs related to using
15 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
16 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
17 DEFENDANTS to use their personal cell phones to respond to work related issues.
18 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and
19 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
20 personal cellular phones for DEFENDANTS within the course and scope of their employment
21 for DEFENDANTS. These expenses were necessary to complete their principal job duties.
22 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this
23 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
24 CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and
25 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
26 expenses as an employer is required to do under the laws and regulations of California.

27 107. PLAINTIFF therefore demands reimbursement for expenditures or losses
28 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

108. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

110. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANTS in California during the time period of _____ until the present (the "AGGRIEVED EMPLOYEES").

111. On _____ PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil

1 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
2 to all AGGRIEVED EMPLOYEES as herein defined.

3 112. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
6 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
7 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in
8 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
9 limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1,
10 1198, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory
11 penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as
12 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
13 State of California for the illegal conduct perpetrated on PLAINTIFF and the other
14 AGGRIEVED EMPLOYEES.

15 113. Some or all of the conduct and violations alleged herein occurred during the
16 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
17 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
18 that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.
20 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one**
21 Labor Code violation committed by an employer—to **pursue penalties for all the Labor Code**
22 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

23 **TENTH CAUSE OF ACTION**
24 **BREACH OF ORAL CONTRACT**
25 **(Alleged by PLAINTIFF against all Defendants)**
26

27 114. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

115. During PLAINTIFF's employment with DEFENDANTS in 2020, PLAINTIFF entered into an oral agreement with DEFENDANTS which entitled PLAINTIFF to an increased rate of pay for working during the Covid-19 pandemic.

116. Moreover, the oral agreement provided that DEFENDANTS would pay PLAINTIFF increased compensation for Covid and/or Hazard Pay.

117. Pursuant to the oral agreement, PLAINTIFF performed work for DEFENDANTS and at all times stood ready to perform all the obligations to DEFENDANTS which PLAINTIFF undertook in the oral agreement.

118. However, DEFENDANTS breached the oral agreement by failing, neglecting, and refusing to compensate PLAINTIFF in accordance with the oral agreement.

119. As a direct and foreseeable result of DEFENDANTS' breach of the oral agreement, PLAINTIFF has suffered monetary damages.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation and unreimbursed expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
 - f. Penalties pursuant to Cal. Lab. Code §1198.5.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
 - a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
 - b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
 4. On behalf of PLAINTIFF for the Tenth cause of action:
 - A) Compensatory damages, according to proof at trial;
 - B) Special and General damages according to proof;
 - C) Statutory damages, penalties and attorney's fees;

1 E) For loss of earnings (both past and future); and,

2 F) For interest at the legal rate in an amount according to proof.

3 5. On behalf of the Tenth Cause of Action:

4 a. Compensatory damages according to proof;

5 b. Interest according to law;

6 c. Costs of suit; and

7 d. Any further relief the court deems just and equitable.

8 6. On all claims:

9 a. An award of interest, including prejudgment interest at the legal rate;

10 b. Such other and further relief as the Court deems just and equitable; and

11 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
13 and/or §2802.

14 DATED: _____

15
16 **ZAKAY LAW GROUP, APLC**

17
18 By: _____
19 Shani O. Zakay
20 Attorney for Plaintiff

21 **DEMAND FOR A JURY TRIAL**

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

23
24 DATED: _____

25
26 **ZAKAY LAW GROUP, APLC**

27
28 By: _____
Shani O. Zakay

Attorney for Plaintiff

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EXHIBIT 1

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Los Angeles, CA 90017

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions