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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 ISMAEL ORTEGA, on behalf of the State
11 of California, as a private attorney general,

12 Plaintiff,

13 vs.

14 LOYAL SOURCE GOVERNMENT
15 SERVICES LLC, a Limited Liability
16 Company; and Does 1 through 50,
17 Inclusive;

18 Defendants.

Case No. 37-2020-00015529-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204, 210, 226(a),
226.7, 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802.

1 Plaintiff Ismael Ortega (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Loyal Source Government
8 Services LLC (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

24 4. Defendant Loyal Source Government Services LLC (“DEFENDANT”) is a
25 limited liability company that at all relevant times mentioned herein conducted and continues
26 to conduct substantial and regular business throughout California.

27 5. DEFENDANT is a staffing company that offers health care, human resources, IT
28

1 and engineering services.

2 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from June of 2019 to December
4 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
5 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
7 but not limited to, performance bonus wages.

8 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who worked for DEFENDANT in California and who were
12 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
13 of January 28, 2019 until a date as determined by the Court (the "PAGA PERIOD").

14 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512,
18 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Order(s). Based upon
19 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
20 within the meaning of Labor Code § 2699, *et seq.*

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

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

11 **THE CONDUCT**

12 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
13 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
14 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
15 calculate minimum and overtime wages for time worked by PLAINTIFF and other
16 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
17 compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
18 wages due them for working without compensation at the correct minimum wage and overtime
19 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
20 correct compensation for all time worked in accordance with applicable law is evidenced by
21 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
22 purposefully avoid the payment of the correct compensation as required by California law which
23 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
24 complied with the law.

25 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
26 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
27 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
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1 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
2 time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required these employees to work off the clock without paying them for all the
5 time they were under DEFENDANT's control. Specifically, DEFENDANT required
6 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
7 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
8 were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
9 other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by
10 working without their time being accurately recorded and without compensation at the
11 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
12 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
13 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

14 13. State and federal law provides that employees must be paid overtime at one-and-
15 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
16 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
17 employee's performance.

18 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
19 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
20 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
21 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
22 hourly basis with incentive compensation when the employees met the various performance
23 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
24 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
25 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
26 of calculating overtime pay. Management and supervisors described the incentive program to
27 potential and new employees as part of the compensation package. As a matter of law, the
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1 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
2 be included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
3 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
4 DEFENDANT.

5 15. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
7 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
9 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
10 compensation as required by California law which allowed DEFENDANT to illegally profit and
11 gain an unfair advantage over competitors who complied with the law. To the extent equitable
12 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
13 PAGA PERIOD should be adjusted accordingly.

14 16. As a result of their rigorous work schedules, PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
16 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
17 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
18 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
19 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
20 off-duty meal period from time to time in which these employees were required by
21 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
23 accordance with DEFENDANT’s corporate policy and practice.

24 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were from time to time also required to work in excess of four (4) hours without being provided
26 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
27 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
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1 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
2 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
3 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
5 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
6 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
7 managers. Additionally, the applicable California Wage Order requires employers to provide
8 employees with off-duty rest periods, which the California Supreme Court defined as time
9 during which an employee is relieved from all work related duties and free from employer
10 control. In so doing, the Court held that the requirement under California law that employers
11 authorize and permit all employees to take rest period means that employers must relieve
12 employees of all duties and relinquish control over how employees spend their time which
13 includes control over the locations where employees may take their rest period. Employers
14 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
15 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
16 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
17 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
18 leave the work premises during their rest period.

19 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
20 employees with an accurate itemized wage statement in writing showing, among other things,
21 gross wages earned and all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
23 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
24 identify the correct gross and net wages earned, the applicable number of hours worked and
25 rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed
26 to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an itemized wage statement that
27 lists all the requirements under California Labor Code 226 *et seq.*

1 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
2 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
3 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
4 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
5 2802, employers are required to indemnify employees for all expenses incurred in the course
6 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
7 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
8 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
9 directions of the employer, even though unlawful, unless the employee, at the time of obeying
10 the directions, believed them to be unlawful."

11 20. In the course of their employment PLAINTIFF and other AGGRIEVED
12 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
13 cellular phones as a result of and in furtherance of their job duties as employees for
14 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
15 associated with the use of their personal cellular phones for DEFENDANT's benefit.
16 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
17 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
18 the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
20 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
21 of DEFENDANT.

22 21. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
23 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
24 to accurately calculate and record the correct overtime rate for the overtime worked by
25 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
26 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
27 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
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1 calculate and/or pay all required overtime compensation for work performed by the
2 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
3 promulgated thereunder as herein alleged.

4 22. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
7 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
8 AJDAR 12157 (Certified for Publication 12/19/18).

9
10 **JURISDICTION AND VENUE**

11 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
15 maintained offices and facilities in this County and/or conducts substantial business in this
16 County, and (ii) committed the wrongful conduct herein alleged in this County against
17 PLAINTIFF and the AGGRIEVED EMPLOYEES.

18 **FIRST CAUSE OF ACTION**

19 **For Violation of the Private Attorneys General Act**

20 **[Cal. Lab. Code §§ 2698, *et seq.*]**

21 **(By PLAINTIFF and Against All Defendants)**

22 25. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-24,
23 supra, as though fully set forth at this point.

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

7 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who worked for DEFENDANT in California and were classified as
11 non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of January
12 28, 2019 until a date as determined by the Court (the "PAGA PERIOD").

13 28. On January 28, 2020, PLAINTIFF gave written notice by electronic mail to the
14 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
15 employer of the specific provisions of this code alleged to have been violated as required by
16 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
17 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
18 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
19 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
20 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 29. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
24 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
25 to pay minimum wages, (e) failed to provide wages when due, and (f) failed to reimburse
26 employees for required expenses, all in violation of the applicable Labor Code sections listed
27 in Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194,
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1 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise
2 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
3 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
4 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
5 the other AGGRIEVED EMPLOYEES.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the State of California and with respect to all AGGRIEVED
11 EMPLOYEES:

12 A) Recovery of civil penalties as prescribed by the Labor Code Private
13 Attorneys General Act of 2004; and,

14 B) An award of attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §2699.

16
17 Dated: April 10, 2020

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

18
19
20 By: /s/ Norman Blumenthal
21 Norman B. Blumenthal
22 Attorneys for Plaintiff
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

January 28, 2020

CA2065

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Loyal Source Government Services LLC
Certified Mail # 70192280000189178366
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 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:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Loyal Source Government Services LLC in California and classified as non-exempt employees during the time period of January 28, 2019 until a date as determined by the Court. Our offices represent Plaintiff Ismael Ortega (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Loyal Source Government Services LLC (“Defendant”). Plaintiff was employed by Defendant in California from June of 2019 to December of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of 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 Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) 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 Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. 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 Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ISMAEL ORTEGA, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

LOYAL SOURCE GOVERNMENT
SERVICES LLC, a Limited Liability
Company; and Does 1 through 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 OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Loyal Source Government Services LLC (“DEFENDANT”) is a
7 limited liability company that at all relevant times mentioned herein conducted and continues
8 to conduct substantial and regular business throughout California.

9 2. DEFENDANT is a staffing company that offers health care, human resources, IT
10 and engineering services.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from June of 2019 to December
13 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
14 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
16 but not limited to, performance bonus wages

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

24 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
27 which failed to lawfully compensate these employees for all their overtime worked.

1 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive
2 business practice whereby DEFENDANT retained and continues to retain wages due
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
5 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
6 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
7 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for working without compensation at the correct minimum wage and overtime rates. DEFENDANT's uniform policy and practice to not pay the members of the CALIFORNIA CLASS the correct compensation for all time worked in accordance with applicable law is evidenced by DEFENDANT's business records. This uniform policy and practice of DEFENDANT was intended to purposefully avoid the payment of the correct compensation as required by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law.

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock 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. PLAINTIFF was from time to time interrupted by work assignments. Indeed there were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the

1 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
2 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
3 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

4 10. State and federal law provides that employees must be paid overtime at one-and-
5 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
6 Members were compensated at an hourly rate plus incentive pay that was tied to specific
7 elements of an employee’s performance.

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

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

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

15 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS Members were from time to time also required to work in excess of four
17 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
18 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
19 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
20 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
21 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
22 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
23 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
25 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
26 Order requires employers to provide employees with off-duty rest periods, which the California
27 Supreme Court defined as time during which an employee is relieved from all work related
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1 duties and free from employer control. In so doing, the Court held that the requirement under
2 California law that employers authorize and permit all employees to take rest period means that
3 employers must relieve employees of all duties and relinquish control over how employees
4 spend their time which includes control over the locations where employees may take their rest
5 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
6 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
7 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and was
8 unlawful based on Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS
9 Members could not leave the work premises during their rest period.

10 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
11 employees with an accurate itemized wage statement in writing showing, among other things,
12 gross wages earned and all applicable hourly rates in effect during the pay period and the
13 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
14 failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that identify
15 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
16 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
17 PLAINTIFF and other CALIFORNIA CLASS members an itemized wage statement that lists
18 all the requirements under California Labor Code 226 *et seq.*

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

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

13 18. By reason of this uniform conduct applicable to PLAINTIFF and all
14 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
15 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
16 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
17 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
18 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour
19 rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
20 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
21 required overtime 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 19. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
25 him in the form of two components. One component of PLAINTIFF's compensation was a
26 base hourly wage. The second component of PLAINTIFF's compensation were non-
27 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF
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1 met certain predefined performance requirements. PLAINTIFF met DEFENDANT's
2 predefined eligibility performance requirements in various pay periods throughout his
3 employment with DEFENDANT and DEFENDANT paid PLAINTIFF the non-discretionary
4 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
5 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
6 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF's
7 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's
8 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout his
9 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
10 constituted wages within the meaning of the California Labor Code and thereby should have
11 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
12 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
13 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
14 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
15 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
16 he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
17 forfeited meal and rest breaks without additional compensation and in accordance with
18 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided PLAINTIFF
19 with a pay stub that failed to accurately display PLAINTIFF's correct rates of overtime pay and
20 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code
21 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation
22 still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount
23 in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

24 25 **JURISDICTION AND VENUE**

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

3 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
5 maintained offices and facilities in this County and/or conducts substantial business in this
6 County, and (ii) committed the wrongful conduct herein alleged in this County against members
7 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

8
9 **THE CALIFORNIA CLASS**

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

19 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
21 accordingly.

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

25. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly calculate and record overtime compensation for overtime worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work.

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

1 27. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
2 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
3 employee for all overtime worked at the applicable rate, as required by California Labor Code
4 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
5 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
6 as to include all earnings in the overtime compensation calculation as required by California
7 Labor Code §§ 510, *et seq.*

8 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
14 place company policies, practices and procedures that failed to pay all
15 minimum and overtime wages due the CALIFORNIA CLASS for all time
16 worked, and failed to accurately record the applicable rates of all overtime
17 worked by the CALIFORNIA CLASS;
- 18 (b) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 unlawfully, unfairly, and/or deceptively having in place a company policy,
21 practice and procedure that failed to correctly calculate overtime
22 compensation due to PLAINTIFF and the members of the CALIFORNIA
23 CLASS;
- 24 (c) Committing an act of unfair competition in violation of the California
25 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
26 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
27 *seq.*, by failing to pay the correct federal overtime wages to the
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1 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
2 required by the FLSA, and retaining the unpaid federal overtime to the
3 benefit of DEFENDANT.;

4 (d) Committing an act of unfair competition in violation of the California
5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
6 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
7 the CALIFORNIA CLASS members; and,

8 (e) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
10 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
11 the CALIFORNIA CLASS members with necessary expenses incurred in
12 the discharge of their job duties.

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

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of
17 their claims as a class will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 CLASS will apply uniformly to every member of the CALIFORNIA
21 CLASS;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA CLASS, was subjected to the
25 uniform employment practices of DEFENDANT and was a non-exempt
26 employee paid on an hourly basis and paid additional non-discretionary
27 incentive wages who was subjected to the DEFENDANT's practice and
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1 policy which fails to pay the correct rate of overtime wages due to the
2 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
3 CLASS and thereby systematically underpays overtime compensation to
4 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
5 result of DEFENDANT's employment practices. PLAINTIFF and the
6 members of the CALIFORNIA CLASS were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair and pervasive
8 pattern of misconduct engaged in by DEFENDANT; and,

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

17 31. In addition to meeting the statutory prerequisites to a Class Action, this action
18 is 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,
20 statutory and other legal questions within the class format, prosecution of
21 separate actions by individual members of the CALIFORNIA CLASS will
22 create the risk of:

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA CLASS; and/or,
27 2) Adjudication with respect to individual members of the
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CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all worked by the members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

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

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

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

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

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

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

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

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

1 to the CALIFORNIA CLASS, thereby making final class-wide relief
2 appropriate with respect to the CALIFORNIA CLASS as a whole;

3 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
4 the business records of DEFENDANT; and,

5 (i) Class treatment provides manageable judicial treatment calculated to bring
6 a efficient and rapid conclusion to all litigation of all wage and hour
7 related claims arising out of the conduct of DEFENDANT as to the
8 members of the CALIFORNIA CLASS.

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

14
15 **THE CALIFORNIA LABOR SUB-CLASS**

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

24 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
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1 compensation for the overtime worked by PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
3 work, required employees to perform this work and permitted or suffered to permit this
4 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
5 CLASS Members overtime wages at the correct amount to which these employees are entitled
6 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

14 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 overtime compensation to members of the CALIFORNIA LABOR SUB-
20 CLASS in violation of the California Labor Code and California
21 regulations and the applicable California Wage Order;
- 22 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
23 entitled to overtime compensation for overtime worked under the overtime
24 pay requirements of California law;
- 25 (c) Whether DEFENDANT failed to accurately record the applicable
26 overtime rates for all overtime worked PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS;

- 1 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with legally
3 required uninterrupted thirty (30) minute meal breaks and rest periods;
4 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate
6 itemized wage statements;
7 (f) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;
9 (g) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,
11 (h) Whether DEFENDANT's conduct was willful.

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

21 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
22 under California law by:

- 23 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
24 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
25 CLASS the correct overtime pay for which DEFENDANT is liable
26 pursuant to Cal. Lab. Code § 1194 & § 1198;
27 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
28

1 accurately pay PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

4 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with
6 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
7 and the legally required rest breaks; and,

8 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
10 itemized statement in writing showing all accurate and applicable
11 overtime rates in effect during the pay period and the corresponding
12 amount of time worked at each overtime rate by the employee;

13 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
14 the CALIFORNIA LABOR SUB-CLASS members with necessary
15 expenses incurred in the discharge of their job duties; and,

16 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
17 when an employee is discharged or quits from employment, the employer
18 must pay the employee all wages due without abatement, by failing to
19 tender full payment and/or restitution of wages owed or in the manner
20 required by California law to the members of the CALIFORNIA LABOR
21 SUB-CLASS who have terminated their employment.

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

24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;

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

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

- 27 (a) Without class certification and determination of declaratory, injunctive,
28

1 statutory and other legal questions within the class format, prosecution of
2 separate actions by individual members of the CALIFORNIA LABOR
3 SUB-CLASS will create the risk of:

4 1) Inconsistent or varying adjudications with respect to individual
5 members of the CALIFORNIA LABOR SUB-CLASS which
6 would establish incompatible standards of conduct for the parties
7 opposing the CALIFORNIA LABOR SUB-CLASS; or,

8 2) Adjudication with respect to individual members of the
9 CALIFORNIA LABOR SUB-CLASS which would as a practical
10 matter be dispositive of interests of the other members not party to
11 the adjudication or substantially impair or impede their ability to
12 protect their interests.

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

20 (c) Common questions of law and fact predominate as to the members of the
21 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
22 violations of California Law as listed above, and predominate over any
23 question affecting only individual CALIFORNIA LABOR SUB-CLASS
24 Members, and a Class Action is superior to other available methods for
25 the fair and efficient adjudication of the controversy, including
26 consideration of:

27 1) The interests of the members of the CALIFORNIA LABOR SUB-
28

1 CLASS in individually controlling the prosecution or defense of
2 separate actions in that the substantial expense of individual
3 actions will be avoided to recover the relatively small amount of
4 economic losses sustained by the individual CALIFORNIA
5 LABOR SUB-CLASS Members when compared to the substantial
6 expense and burden of individual prosecution of this litigation;

7 2) Class certification will obviate the need for unduly duplicative
8 litigation that would create the risk of:

9 A. Inconsistent or varying adjudications with respect to
10 individual members of the CALIFORNIA LABOR SUB-
11 CLASS, which would establish incompatible standards of
12 conduct for the DEFENDANT; and/or,

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

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

25 4) A class action is superior to other available methods for the fair
26 and efficient adjudication of this litigation because class treatment
27 will obviate the need for unduly and unnecessary duplicative
28

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

43. 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;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

- 1 (g) DEFENDANT has acted or refused to act on grounds generally applicable
2 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
3 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
4 CLASS as a whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The
7 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
8 CLASS Members classified as non-exempt employees during the
9 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to bring
11 a efficient and rapid conclusion to all litigation of all wage and hour
12 related claims arising out of the conduct of DEFENDANT as to the
13 members of the CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

17 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

18 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

22 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
23 Code § 17021.

24 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
25 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
26 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
27 competition as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair
2 competition may be enjoined in any court of competent jurisdiction. The court
3 may make such orders or judgments, including the appointment of a receiver, as
4 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

5 Cal. Bus. & Prof. Code § 17203.

6 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair Labor
10 Standards Act and federal regulations promulgated thereunder, for which this Court should
11 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
12 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
13 restitution of wages wrongfully withheld.

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

20 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
21 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
22 other members of the CALIFORNIA CLASS, minimum and overtime wages for all time
23 worked, failed to accurately to record the applicable rate of all overtime worked, failed to pay
24 reporting time wages owed, failed to reimburse necessary business expenses incurred, and failed
25 to provide the required amount of overtime compensation due to a systematic miscalculation
26 of the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
27 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
28

1 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
2 Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 51. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

15 53. PLAINTIFF further demands on behalf of himself and on behalf of each
16 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty
17 paid rest period was not timely provided as required by law.

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

24 55. All the acts described herein as violations of, among other things, the Industrial
25 Welfare Commission Wage Orders, the California Code of Regulations, and the California
26 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
27 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
28

1 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

2 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
3 and do, seek such relief as may be necessary to restore to them the money and property which
4 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
5 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
6 unfair business practices, including earned but unpaid wages for all overtime worked.

7 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
8 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
9 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
10 engaging in any unlawful and unfair business practices in the future.

11 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
12 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
13 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
14 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
15 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
16 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
17 engage in these unlawful and unfair business practices.

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

27 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

61. 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.

62. 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 amounts specified by law.

63. 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.

64. DEFENDANT 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 overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

11 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
13 receive full compensation for all overtime worked.

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

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

25 70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
27 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
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1 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
3 to accurately record and pay using the applicable overtime rate as evidenced by
4 DEFENDANT's business records and witnessed by employees.

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

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

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

26 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
28

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

11 12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Minimum Wages**

14 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
16 **and Against All Defendants)**

17 75. 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 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
22 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
23 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
24 CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

27 85. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28

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

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

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

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

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

5
6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

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

14 90. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
15 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
16 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
17 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
18 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
19 duties for the legally required off-duty meal periods. As a result of their rigorous work
20 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
21 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
22 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
24 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
25 and CALIFORNIA LABOR SUB-CLASS Members with a second off-duty meal period from
26 time to time in which these employees were required by DEFENDANT to work ten (10) hours
27 of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
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1 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

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

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

12
13 **FIFTH CAUSE OF ACTION**

14 **For Failure to Provide Required Rest Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

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

21 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
22 time to time required to work in excess of four (4) hours without being provided ten (10) minute
23 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
24 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
25 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
26 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
27 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
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1 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
2 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
3 Members were periodically denied their proper rest periods by DEFENDANT and
4 DEFENDANT's managers.

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

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

14
15 **SIXTH CAUSE OF ACTION**

16 **For Failure to Provide Accurate Itemized Statements**

17 **[Cal. Lab. Code § 226]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

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

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

25 (1) gross wages earned,

26 (2) total hours worked by the employee, except for any employee whose compensation
27 is solely based on a salary and who is exempt from payment of overtime under
28

1 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
2 Commission,
3 (3) the number of piecerate units earned and any applicable piece rate if the employee
4 is paid on a piece-rate basis,
5 (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item,
7 (5) net wages earned,
8 (6) the inclusive dates of the period for which the employee is paid,
9 (7) the name of the employee and his or her social security number, except that by
10 January 1, 2008, only the last four digits of his or her social security number or an
11 employee identification number other than a social security number may be shown on
12 the itemized statement,
13 (8) the name and address of the legal entity that is the employer, and
14 (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.

16 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 other members of the CALIFORNIA CLASS with complete and accurate wage statements
18 which failed to show, among other things, the correct gross and net wages earned and correct
19 amount of time worked. Cal. Lab. Code § 226 provides that every employer shall furnish each
20 of his or her employees with an accurate itemized wage statement in writing showing, among
21 other things, gross wages earned and all applicable hourly rates in effect during the pay period
22 and the corresponding amount of time worked at each hourly rate. Aside, from the violations
23 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
24 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
25 DEFENDANT from time to time provided PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

102. 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.

103. At all relevant times herein, DEFENDANT 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 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-

1 CLASS members for expenses which included, but were not limited to, costs related to using
2 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
4 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
5 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
6 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
7 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
8 These expenses were necessary to complete their principal job duties. DEFENDANT is
9 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
10 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
11 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
13 to do under the laws and regulations of California.

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

18 **EIGHTH CAUSE OF ACTION**

19 **For Failure to Pay Wages When Due**

20 **[Cal. Lab. Code §§ 201, 202, 203]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

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

26 106. Cal. Lab. Code § 200 provides that:

27 As used in this article:

1 (a) "Wages" includes all amounts for labor performed by employees of every
2 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

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

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

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

9 If an employee not having a written contract for a definite period quits his or her
10 employment, his or her wages shall become due and payable not later than 72
11 hours thereafter, unless the employee has given 72 hours previous notice of his
12 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
13 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
14 mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

15 109. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
16 CLASS Members' employment contract.

17 110. Cal. Lab. Code § 203 provides:

18 If an employer willfully fails to pay, without abatement or reduction, in
19 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
20 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.

21 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
22 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
employees who actually worked overtime, as required by law.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
7 B) An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
9 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
10 withheld from compensation due to PLAINTIFF and the other members of the
11 CALIFORNIA CLASS; and,
12 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due PLAINTIFF and the other members of
21 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
22 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
23 C) Meal and rest period compensation pursuant to California Labor Code Section
24 226.7 and the applicable IWC Wage Order;
25 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per each member of
27 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;

F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

G) The wages of all terminated employees from the CALIFORNIA LABOR SUBCLASS 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.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

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

Dated: January 28, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: January 28, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff