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PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 1, FOR ALL
PURPOSES

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

CODY HANSEN, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

HOLIDAY AL MANAGEMENT SUB
LLC, a Limited Liability Company;
HARVEST MANAGEMENT SUB TRS
CORP., a Corporation; HOLIDAY AL NIC
MANAGEMENT LLC, a Limited Liability
Company; and Does 1 through 50,
Inclusive;

Defendants.

Case No. **C20-00779**

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

6 **INTRODUCTION**

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

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

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

23 **THE PARTIES**

24 4. Defendant Holiday AL Management Sub LLC is a limited liability company that
25 at all relevant times mentioned herein conducted and continues to conduct substantial and
26 regular business throughout California.
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1 5. Defendant Harvest Management Sub TRS Corp. is a corporation that at all
2 relevant times mentioned herein conducted and continues to conduct substantial and regular
3 business throughout California.

4 6. Defendant Holiday AL NIC Management LLC is a limited liability company that
5 at all relevant times mentioned herein conducted and continues to conduct substantial and
6 regular business throughout California.

7 7. Defendants Holiday AL Management Sub LLC, Harvest Management Sub TRS
8 Corp., and Holiday AL NIC Management LLC were the joint employers of PLAINTIFF as
9 evidenced by paycheck and employment records, and are therefore jointly responsible as
10 employers for the conduct alleged herein, and are therefore collectively referred to herein as
11 DEFENDANT.

12 8. DEFENDANT owns and operates a senior living management company.

13 9. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from October of 2017 to September
15 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
16 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
17 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
18 but not limited to, performance bonus wages

19 10. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, brings this Representative Action on behalf of the State of California with respect to
22 himself and all individuals who are or previously were employed by Holiday AL Management
23 Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management
24 LLC in California and who were classified as non-exempt employees ("AGGRIEVED
25 EMPLOYEES") during the time period of January 16, 2019 until a date as determined by the
26 Court (the "PAGA PERIOD").

27 11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
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1 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
2 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
3 violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512,
4 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Order(s). Based upon
5 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
6 within the meaning of Labor Code § 2699, *et seq.*

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

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

24 THE CONDUCT

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

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

1 16. State and federal law provides that employees must be paid overtime at one-and-
2 one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES
3 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

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

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

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

7 21. In addition, when DEFENDANT required PLAINTIFF and other AGGRIEVED
8 EMPLOYEES to respond to calls and engage in additional work for DEFENDANT after they
9 already were clocked out and returned home for the day, this resulted in a second reporting for
10 work in a single workday. In such a circumstance of a second reporting for work in a single
11 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
12 Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is required to report for
13 work a second time in any one workday and is furnished less than two (2) hours of work on the
14 second reporting, said employee shall be paid for two (2) hours at the employee's regular rate
15 of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040, subd.
16 5(B).

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

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

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

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

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

7
8 **JURISDICTION AND VENUE**

9 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

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

16 **FIRST CAUSE OF ACTION**

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

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

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

20 29. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-28,
21 *supra*, as though fully set forth at this point.

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

5 31. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by Holiday AL Management
9 Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management
10 LLC in California and who were classified as non-exempt employees (the "AGGRIEVED
11 EMPLOYEES") during the time period of January 16, 2019 until a date as determined by the
12 Court (the "PAGA PERIOD").

13 32. On January 16, 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 33. 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 minimum wages, (d) failed
25 to pay overtime wages, (e) failed to pay wages when due, and (f) failed to reimburse employees
26 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
27 Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
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1 1198, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to civil
2 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties
3 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
4 the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES.

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7 **PRAYER FOR RELIEF**

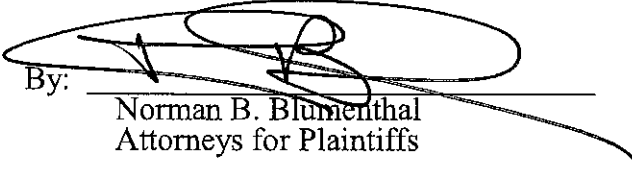
8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
9 severally, as follows:

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 Dated: April 28, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
17

18
19
20 By: 

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

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

January 16, 2020
CA2034

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANTS

Labor and Workforce Development Agency
Online Filing

Holiday AL Management Sub LLC
Certified Mail # 70192280000189178311
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Harvest Management Sub TRS Corp.
Certified Mail # 70192280000189178328
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Holiday AL NIC Management LLC
Certified Mail # 70192280000189178335
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

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 Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC in California and classified as non-exempt employees during the time period of January 16, 2019 until a date as determined by the Court. Our offices represent Plaintiff Cody Hansen (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC (“Defendants”). Plaintiff was employed by Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC in California from October of 2017 to September of 2019 as a non-exempt employee entitled

to the legally required meal and rest breaks and payment for all time worked under Defendants' Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC control. Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC, 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 Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC 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 Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC failed to comply with Industrial Wage Order 7(A)(3) in that Defendants Holiday AL Management Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management LLC 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 Defendants, 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 Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 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 Defendants 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 CONTRA COSTA

CODY HANSEN, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

HOLIDAY AL MANAGEMENT SUB
LLC, a Limited Liability Company;
HARVEST MANAGEMENT SUB TRS
CORP., a Corporation; HOLIDAY AL NIC
MANAGEMENT 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 Cody Hansen (“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 Holiday AL Management Sub LLC is a limited liability company that
7 at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. Defendant Harvest Management Sub TRS Corp. is a corporation that at all
10 relevant times mentioned herein conducted and continues to conduct substantial and regular
11 business throughout California.

12 3. Defendant Holiday AL NIC Management LLC is a limited liability company that
13 at all relevant times mentioned herein conducted and continues to conduct substantial and
14 regular business throughout California.

15 4. Defendants Holiday AL Management Sub LLC, Harvest Management Sub TRS
16 Corp., and Holiday AL NIC Management LLC were the joint employers of PLAINTIFF as
17 evidenced by paycheck and employment records, and are therefore jointly responsible as
18 employers for the conduct alleged herein, and are therefore collectively referred to herein as
19 DEFENDANT.

20 5. DEFENDANT owns and operates a senior living management company.

21 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
22 employee entitled to overtime pay and meal and rest periods from October of 2017 to September
23 of 2019. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
24 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
25 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
26 but not limited to, performance bonus wages

27 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
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1 defined as all individuals who are or previously were employed by Holiday AL Management
2 Sub LLC and/or Harvest Management Sub TRS Corp. and/or Holiday AL NIC Management
3 LLC in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at
4 any time during the period beginning on the date four (4) years prior to the filing of this
5 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
6 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
7 Members is under five million dollars (\$5,000,000.00).

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

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

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

THE CONDUCT

11. 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.

12. 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

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

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

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

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

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

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

18. In addition, when DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to respond to calls and engage in additional work for DEFENDANT after they already were clocked out and returned home for the day, this resulted in a second reporting for work in a single workday. In such a circumstance of a second reporting for work in a single workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040, subd.

1 5(B).

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

11 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
12 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
13 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
14 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
15 2802, employers are required to indemnify employees for all expenses incurred in the course
16 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
19 directions of the employer, even though unlawful, unless the employee, at the time of obeying
20 the directions, believed them to be unlawful."

21 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of their personal cellular phones for DEFENDANT's benefit.
26 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
27 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
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1 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
2 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
3 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
4 benefit of DEFENDANT.

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

16 23. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
17 him in the form of two components. One component of PLAINTIFF’s compensation was a
18 base hourly wage. The second component of PLAINTIFF’s compensation were non-
19 discretionary incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF
20 met certain predefined performance requirements. PLAINTIFF met DEFENDANT’s
21 predefined eligibility performance requirements in various pay periods throughout his
22 employment with DEFENDANT and DEFENDANT paid PLAINTIFF the non-discretionary
23 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
24 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
25 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s
26 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s
27 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout his
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1 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
2 constituted wages within the meaning of the California Labor Code and thereby should have
3 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
4 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
5 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
6 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
7 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
8 he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
9 forfeited meal and rest breaks without additional compensation and in accordance with
10 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided PLAINTIFF
11 with a pay stub that failed to accurately display PLAINTIFF's correct rates of overtime pay and
12 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code
13 § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation
14 still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount
15 in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

16 17 **JURISDICTION AND VENUE**

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

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

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

9 30. DEFENDANT has the legal burden to establish that each and every
10 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
11 accurately calculate the “regular rate of pay” by including the incentive compensation that
12 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
13 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
14 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
15 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
16 overtime rate for all overtime worked, so as to satisfy their burden. This common business
17 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on
18 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
19 §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
20 claim.

21 31. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
22 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
23 employee for all overtime worked at the applicable rate, as required by California Labor Code
24 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
25 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
26 as to include all earnings in the overtime compensation calculation as required by California
27 Labor Code §§ 510, *et seq.*

1 32. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 33. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

5 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
7 place company policies, practices and procedures that failed to pay all
8 minimum and overtime wages due the CALIFORNIA CLASS for all time
9 worked, and failed to accurately record the applicable rates of all overtime
10 worked by the CALIFORNIA CLASS;

11 (b) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
13 unlawfully, unfairly, and/or deceptively having in place a company policy,
14 practice and procedure that failed to correctly calculate overtime
15 compensation due to PLAINTIFF and the members of the CALIFORNIA
16 CLASS;

17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
19 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
20 *seq.*, by failing to pay the correct federal overtime wages to the
21 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
22 required by the FLSA, and retaining the unpaid federal overtime to the
23 benefit of DEFENDANT.;

24 (d) Committing an act of unfair competition in violation of the California
25 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
26 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
27 the CALIFORNIA CLASS members; and,
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- 1 (e) Committing an act of unfair competition in violation of the California
2 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
3 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members with necessary expenses incurred in
5 the discharge of their job duties.

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition of
10 their claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS will apply uniformly to every member of the CALIFORNIA
14 CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA CLASS, was subjected to the
18 uniform employment practices of DEFENDANT and was a non-exempt
19 employee paid on an hourly basis and paid additional non-discretionary
20 incentive wages who was subjected to the DEFENDANT's practice and
21 policy which fails to pay the correct rate of overtime wages due to the
22 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
23 CLASS and thereby systematically underpays overtime compensation to
24 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
25 result of DEFENDANT's employment practices. PLAINTIFF and the
26 members of the CALIFORNIA CLASS were and are similarly or
27 identically harmed by the same unlawful, deceptive, unfair and pervasive
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1 pattern of misconduct engaged in by DEFENDANT; and,

- 2 (d) The representative PLAINTIFF will fairly and adequately represent and
3 protect the interest of the CALIFORNIA CLASS, and has retained
4 counsel who are competent and experienced in Class Action litigation.
5 There are no material conflicts between the claims of the representative
6 PLAINTIFF and the members of the CALIFORNIA CLASS that would
7 make class certification inappropriate. Counsel for the CALIFORNIA
8 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
9 Members.

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

- 12 (a) Without class certification and determination of declaratory, injunctive,
13 statutory and other legal questions within the class format, prosecution of
14 separate actions by individual members of the CALIFORNIA CLASS will
15 create the risk of:
- 16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA CLASS which would establish
18 incompatible standards of conduct for the parties opposing the
19 CALIFORNIA CLASS; and/or,
- 20 2) Adjudication with respect to individual members of the
21 CALIFORNIA CLASS which would as a practical matter be
22 dispositive of interests of the other members not party to the
23 adjudication or substantially impair or impede their ability to
24 protect their interests.
- 25 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
26 act on grounds generally applicable to the CALIFORNIA CLASS, making
27 appropriate class-wide relief with respect to the CALIFORNIA CLASS
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1 as a whole in that DEFENDANT uniformly failed to pay all wages due.
2 Including the correct overtime rate, for all worked by the members of the
3 CALIFORNIA CLASS as required by law;

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

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

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

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

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

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

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

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

36. 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 CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and

1 efficient adjudication of the claims of the members of the CALIFORNIA
2 CLASS because in the context of employment litigation a substantial
3 number of individual CALIFORNIA CLASS Members will avoid
4 asserting their rights individually out of fear of retaliation or adverse
5 impact on their employment;

6 (c) The members of the CALIFORNIA CLASS are so numerous that it is
7 impractical to bring all members of the CALIFORNIA CLASS before the
8 Court;

9 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
10 able to obtain effective and economic legal redress unless the action is
11 maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations and
14 other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA CLASS;

17 (f) There is a community of interest in ensuring that the combined assets of
18 DEFENDANT are sufficient to adequately compensate the members of
19 the CALIFORNIA CLASS for the injuries sustained;

20 (g) DEFENDANT has acted or refused to act on grounds generally applicable
21 to the CALIFORNIA CLASS, thereby making final class-wide relief
22 appropriate with respect to the CALIFORNIA CLASS as a whole;

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

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

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

7
8 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

7 41. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

2 (g) The proper measure of damages and penalties owed to the members of the
3 CALIFORNIA LABOR SUB-CLASS; and,

4 (h) Whether DEFENDANT's conduct was willful.

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

14 44. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
15 under California law by:

16 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS the correct overtime pay for which DEFENDANT is liable
19 pursuant to Cal. Lab. Code § 1194 & § 1198;

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

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

- 1 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
3 itemized statement in writing showing all accurate and applicable
4 overtime rates in effect during the pay period and the corresponding
5 amount of time worked at each overtime rate by the employee;
- 6 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
7 the CALIFORNIA LABOR SUB-CLASS members with necessary
8 expenses incurred in the discharge of their job duties; and,
- 9 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
10 when an employee is discharged or quits from employment, the employer
11 must pay the employee all wages due without abatement, by failing to
12 tender full payment and/or restitution of wages owed or in the manner
13 required by California law to the members of the CALIFORNIA LABOR
14 SUB-CLASS who have terminated their employment.

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

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
18 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
19 Members is impracticable and the disposition of their claims as a class
20 will benefit the parties and the Court;
- 21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this Complaint are common to the CALIFORNIA
23 LABOR SUB-CLASS and will apply uniformly to every member of the
24 CALIFORNIA LABOR SUB-CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims of
26 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
27 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
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1 was a non-exempt employee paid on an hourly basis and paid additional
2 non-discretionary incentive wages who was subjected to the
3 DEFENDANT's practice and policy which failed to pay the correct rate
4 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for
5 all overtime worked. PLAINTIFF sustained economic injury as a result
6 of DEFENDANT's employment practices. PLAINTIFF and the members
7 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
8 identically harmed by the same unlawful, deceptive, unfair and pervasive
9 pattern of misconduct engaged in by DEFENDANT; and,

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

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

- 20 (a) Without class certification and determination of declaratory, injunctive,
21 statutory and other legal questions within the class format, prosecution of
22 separate actions by individual members of the CALIFORNIA LABOR
23 SUB-CLASS will create the risk of:

- 24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA LABOR SUB-CLASS which
26 would establish incompatible standards of conduct for the parties
27 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

20 1) The interests of the members of the CALIFORNIA LABOR SUB-
21 CLASS in individually controlling the prosecution or defense of
22 separate actions in that the substantial expense of individual
23 actions will be avoided to recover the relatively small amount of
24 economic losses sustained by the individual CALIFORNIA
25 LABOR SUB-CLASS Members when compared to the substantial
26 expense and burden of individual prosecution of this litigation;

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

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

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

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

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

47. 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;

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

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as 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.

Cal. Bus. & Prof. Code § 17203.

51. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the

1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, The Fair Labor
3 Standards Act and federal regulations promulgated thereunder, for which this Court should
4 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
5 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
6 restitution of wages wrongfully withheld.

7 52. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and were without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages wrongfully
12 withheld.

13 53. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
15 other members of the CALIFORNIA CLASS, minimum and overtime wages for all time
16 worked, failed to accurately to record the applicable rate of all overtime worked, failed to pay
17 reporting time wages owed, failed to reimburse necessary business expenses incurred, and failed
18 to provide the required amount of overtime compensation due to a systematic miscalculation
19 of the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
20 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
21 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
22 Prof. Code § 17203, including restitution of wages wrongfully withheld.

23 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANT.

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

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

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

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

64. 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.

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

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

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

11 68. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of overtime worked and correct applicable overtime rate for the amount of overtime
14 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
15 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
17 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
18 all overtime worked.

19 69. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
21 result of implementing a uniform policy and practice that denied accurate compensation to
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all
23 overtime worked, including, the work performed in excess of eight (8) hours in a workday
24 and/or forty (40) hours in any workweek.

25 70. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
27 consequently underpaid the actual time worked by PLAINTIFF and other members of the
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1 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
2 payment of all earned wages, and other benefits in violation of the California Labor Code, the
3 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

18 74. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
20 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
21 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
23 to accurately record and pay using the applicable overtime rate as evidenced by
24 DEFENDANT's business records and witnessed by employees.

25 75. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFF and the other members of the
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1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

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

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

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

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5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

13 80. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
16 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
17 CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

20 89. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS for the true time they worked, PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
24 injury in amounts which are presently unknown to them and which will be ascertained
25 according to proof at trial.

26 90. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
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1 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
3 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
4 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
5 correct minimum wages for their time worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 99. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
2 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that rest period was not provided.

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

18 102. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation
22 is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission,

25 (3) the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the employee
28

1 may be aggregated and shown as one item,
2 (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and his or her social security number, except that by
5 January 1, 2008, only the last four digits of his or her social security number or an
6 employee identification number other than a social security number may be shown on
7 the itemized statement,
8 (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.

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

22 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
23 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
25 expended calculating the correct rates for the overtime worked and the amount of employment
26 taxes which were not properly paid to state and federal tax authorities. These damages are
27 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
28

1 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
2 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
3 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
4 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
5 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

6
7 **SEVENTH CAUSE OF ACTION**

8 **For Failure to Reimburse Employees for Required Expenses**

9 **[Cal. Lab. Code § 2802]**

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

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

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

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 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.

19 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
23 CLASS members for expenses which included, but were not limited to, costs related to using
24 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
26 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
27 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
28

1 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
2 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
3 These expenses were necessary to complete their principal job duties. DEFENDANT is
4 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
5 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
6 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
7 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
8 to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

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

21 110. Cal. Lab. Code § 200 provides that:

22 As used in this article:

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

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

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

1 immediately.”

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

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

8 113. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
9 CLASS Members’ employment contract.

10 114. Cal. Lab. Code § 203 provides:

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

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

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

27 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
28

CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;
- D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,
- F) The wages of all terminated employees from the CALIFORNIA LABOR SUB-

1 CLASS as a penalty from the due date thereof at the same rate until paid or until
2 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3 3. On all claims:

- 4 A) An award of interest, including prejudgment interest at the legal rate;
5 B) Such other and further relief as the Court deems just and equitable; and,
6 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
7 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

8
9 Dated: January 16, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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11
12 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 16, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff