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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 **LESLIE SENOREN**, an individual, on behalf of
15 herself, and on behalf of all persons similarly
16 situated,

17 Plaintiff,

18 vs.

19 **AIR CANADA CORPORATION**, a
20 Corporation; and **DOES 1 through 50**,
21 inclusive,

22 Defendants.

Case No. _____

20STCV13942

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF CAL. LAB. CODE § 204(d);
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
9. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

BY FAX

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

4
5 **THE PARTIES**

6 1. Defendant Air Canada Corporation (“DEFENDANT”) is a Corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the
8 state of California.

9 2. DEFENDANT is the flag carrier and the largest airline of Canada by fleet size and
10 passengers carried. The airline, founded in 1937, provides scheduled and charter air transport
11 for passengers and cargo.

12 3. PLAINTIFF was employed by DEFENDANT in California at LAX Airport as a
13 Customer Service Agent from April of 2019 to October of 2019 and was at all times classified
14 by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

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

24 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
27 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
28 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained

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

7 6. 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 7. 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 members of the
22 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
23 Defendants' agents, servants and/or employees.

24 **THE CONDUCT**

25
26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
27 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
28 meaning the time during which an employee is subject to the control of an employer, including

1 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
2 and CALIFORNIA CLASS Members to work without paying them for all the time they were
3 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
4 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
5 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
6 should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other
7 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
8 regularly working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. DEFENDANT's policy and practice not to pay
10 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
11 DEFENDANT's business records.

12 9. As a result of their rigorous work schedules, PLAINTIFF and other
13 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
14 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
15 other CALIFORNIA CLASS Members were required from time to time to perform work as
16 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
17 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
18 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
19 which these employees were required by DEFENDANT to work ten (10) hours of work.
20 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
21 without additional compensation and in accordance with DEFENDANT's corporate policy and
22 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
23 production levels for each employee at the busy airports they operated at.

24 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS Members were also required from time to time 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
28 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes

1 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
4 not provided with one hour wages in lieu thereof.

5 11. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
6 employment are due and payable twice during each calendar month, on days designated in
7 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
8 requires employers to pay employees all wages owed within seven (7) days of the close of the
9 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
10 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
11 the payroll period.

12 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
13 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
14 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
15 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
16 all 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. As such, DEFENDANT knew or should have
20 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
21 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
22 Members forfeited time worked by working without their time being accurately recorded and
23 without compensation at the applicable minimum wage and overtime wage rates. To the extent
24 that the time worked off the clock did not qualify for overtime premium payment,
25 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
26 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

27 13. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses

1 incurred by PLAINTIFF and other CALIFORNIA CLASS Members 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 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
10 Members 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 CALIFORNIA CLASS Members 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 members of the
17 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
18 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
19 benefit of DEFENDANT.

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

1 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
2 statements which violated Cal. Lab. Code § 226.

3 16. In violation of the applicable sections of the California Labor Code and the
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
5 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
6 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
7 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
8 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
11 PERIOD should be adjusted accordingly.

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

22 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
24 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
25 did not have a policy or practice which provided timely off-duty meal and rest breaks to
26 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
27 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved
28 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's

1 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
2 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
3 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
4 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
5 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
6 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
7 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
8 the sum or value of \$75,000.

9 10 **JURISDICTION AND VENUE**

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

15 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
17 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
18 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
19 committed the wrongful conduct herein alleged in this County against members of the
20 CALIFORNIA CLASS.

21 22 **THE CALIFORNIA CLASS**

23 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
26 all individuals who are or previously were employed by DEFENDANT in California and
27 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
28 period beginning four (4) years prior to the filing of this Complaint and ending on the date as

1 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
2 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
3 (\$5,000,000.00).

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

7 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
8 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
9 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
10 to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS
11 Members, even though DEFENDANT enjoyed the benefit of this work, required employees to
12 perform this work and permits or suffers to permit this work.

13 24. DEFENDANT has the legal burden to establish that each and every
14 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
15 required by California laws. The DEFENDANT, however, failed to have in place during the
16 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
17 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
18 business practice is applicable to each and every CALIFORNIA CLASS Member can be
19 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
20 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
21 elements of this claim.

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

24 26. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
25 law by:

- 26 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
27 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
28 deceptively having in place company policies, practices and procedures

- 1 that failed to record and pay PLAINTIFF and the other members of the
2 CALIFORNIA CLASS for all time worked, including minimum wages
3 owed and overtime wages owed for work performed by these employees;
- 4 (b) Committing an act of unfair competition in violation of the UCL, by
5 failing to provide the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with the legally required meal and rest periods;
- 7 (c) Committing an act of unfair competition in violation of the UCL, by
8 failing to provide the PLAINTIFF and the other members of the
9 CALIFORNIA CLASS with timely wages in violation of Cal. Lab. Code
10 Section 204(d); and,
- 11 (d) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
13 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
14 the CALIFORNIA CLASS members with necessary expenses incurred in
15 the discharge of their job duties.

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

- 18 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
19 that the joinder of all such persons is impracticable and the disposition of
20 their claims as a class 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 CLASS will apply to every member of the CALIFORNIA CLASS;
- 24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
26 other members of the CALIFORNIA CLASS, was classified as a non-
27 exempt employee paid on an hourly basis who was subjected to the
28 DEFENDANT's deceptive practice and policy which failed to provide the

1 legally required meal and rest periods to the CALIFORNIA CLASS and
2 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed
6 by the same unlawful, deceptive, and unfair misconduct engaged in by
7 DEFENDANT; and,

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
- 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

3 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
4 act on grounds generally applicable to the CALIFORNIA CLASS, making
5 appropriate class-wide relief with respect to the CALIFORNIA CLASS
6 as a whole in that DEFENDANT failed to pay all wages due to members
7 of the CALIFORNIA CLASS as required by law;

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties
10 to the adjudication or substantially impair or impede their
11 ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT, which
15 may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to
17 assert their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class treatment
20 will obviate the need for unduly and unnecessary duplicative
21 litigation that is likely to result in the absence of certification of
22 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 25 (a) The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual CALIFORNIA
27 CLASS Members because the DEFENDANT's employment practices are
28 applied with respect to the CALIFORNIA CLASS;

- 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 CLASS because in the context of employment litigation a substantial
4 number of individual CALIFORNIA CLASS Members will avoid
5 asserting their rights individually out of fear of retaliation or adverse
6 impact on their employment;
- 7 (c) The members of the CALIFORNIA CLASS are so numerous that it is
8 impractical to bring all members of the CALIFORNIA CLASS before the
9 Court;
- 10 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
11 able to obtain effective and economic legal redress unless the action is
12 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 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 CLASS for the injuries sustained;
- 21 (g) DEFENDANT has acted or refused to act on grounds generally applicable
22 to the CALIFORNIA CLASS, thereby making final class-wide relief
23 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 24 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
25 the business records of DEFENDANT; and,
- 26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 a efficient and rapid conclusion to all litigation of all wage and hour
28 related claims arising out of the conduct of DEFENDANT as to the

1 members of the CALIFORNIA CLASS.

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

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

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

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

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

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

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

- 10 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
11 compensation due to members of the CALIFORNIA LABOR SUB-
12 CLASS for missed meal and rest breaks in violation of the California
13 Labor Code and California regulations and the applicable California Wage
14 Order;
15 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS with accurate
17 itemized wage statements;
18 (c) Whether DEFENDANT has engaged in unfair competition by the
19 above-listed conduct;
20 (d) The proper measure of damages and penalties owed to the members of the
21 CALIFORNIA LABOR SUB-CLASS; and,
22 (e) Whether DEFENDANT's conduct was willful.

23 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
24 under California law by:

- 25 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
27 CLASS all wages due for overtime worked, for which DEFENDANT is
28 liable pursuant to Cal. Lab. Code § 1194;

- 1 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
2 accurately pay PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUB-CLASS the correct minimum wage pay for which
4 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 5 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
6 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
7 itemized statement in writing showing the corresponding correct amount
8 of wages earned by the employee;
- 9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
12 meal breaks and the legally required off-duty rest breaks;
- 13 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
14 when an employee is discharged or quits from employment, the employer
15 must pay the employee all wages due without abatement, by failing to
16 tender full payment and/or restitution of wages owed or in the manner
17 required by California law to the members of the CALIFORNIA LABOR
18 SUB-CLASS who have terminated their employmentl;
- 19 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
20 the CALIFORNIA LABOR SUB-CLASS members with necessary
21 expenses incurred in the discharge of their job duties; and,
- 22 (g) Violating Cal. Lab. Code § 204 by failing to pay PLAINTIFF and the
23 CALIFORNIA LABOR SUB-CLASS members timely wages.

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

- 26 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
27 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
28 Members is impracticable and the disposition of their claims as a class

1 will benefit the parties and the Court;

2 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
3 that are raised in this Complaint are common to the CALIFORNIA
4 LABOR SUB-CLASS and will apply to every member of the
5 CALIFORNIA LABOR SUB-CLASS;

6 (c) The claims of the representative PLAINTIFF are typical of the claims of
7 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
8 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
9 was a non-exempt employee paid on an hourly basis who was subjected
10 to the DEFENDANT's practice and policy which failed to pay the correct
11 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
12 PLAINTIFF sustained economic injury as a result of DEFENDANT's
13 employment practices. PLAINTIFF and the members of the
14 CALIFORNIA LABOR SUB-CLASS were and are similarly or
15 identically harmed by the same unlawful, deceptive, and unfair
16 misconduct engaged in by DEFENDANT; and,

17 (d) The representative PLAINTIFF will fairly and adequately represent and
18 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
19 retained counsel who are competent and experienced in Class Action
20 litigation. There are no material conflicts between the claims of the
21 representative PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS that would make class certification inappropriate.
23 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
24 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

27 (a) Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution of

1 separate actions by individual members of the CALIFORNIA LABOR
2 SUB-CLASS will create the risk of:

- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which
5 would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA LABOR SUB-CLASS; or,
7 2) Adjudication with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS which would as a practical
9 matter be dispositive of interests of the other members not party to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests.

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

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

- 26 1) The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of
28 separate actions in that the substantial expense of individual

actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative 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.

39. This Court should permit this action to be maintained as a Class Action pursuant

1 to Cal. Code of Civ. Proc. § 382 because:

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to bring
7 a efficient and rapid conclusion to all litigation of all wage and hour
8 related claims arising out of the conduct of DEFENDANT as to the
9 members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

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

20 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
21 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
22 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
23 competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver, as
27 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.

28 Cal. Bus. & Prof. Code § 17203.

1 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Industrial Wage Order(s), the California Code of Regulations and the California
4 Labor Code including Sections 204(d), 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
5 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
6 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
7 unfair competition, including restitution of wages wrongfully withheld.

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

14 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
15 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
16 meal and rest periods, the required amount of compensation for missed meal and rest periods
17 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
18 all necessary business expenses incurred, due to a business practice that cannot be justified,
19 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
20 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
21 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
22 wrongfully withheld.

23 46. 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 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide

1 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
2 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

3 48. Therefore, PLAINTIFF demands on behalf of herself 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 49. PLAINTIFF further demands on behalf of herself and each member of the
9 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
10 duty paid rest period was not timely provided as required by law.

11 50. 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 time worked, and
14 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 51. 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 52. 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 time worked.

27 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10
11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

21 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
22 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
23 Members to work without paying them for all the time they were under DEFENDANT's control.
24 As such, during the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
26 were entitled to, constituting a failure to pay all earned wages.

27 65. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

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

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

11 67. 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 compensation, DEFENDANT acted and
14 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
16 their legal rights, or the consequences to them, and with the despicable intent of depriving them
17 of their property and legal rights, and otherwise causing them injury in order to increase
18 company profits at the expense of these employees.

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

LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

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

70. 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 pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by

1 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
2 including overtime work.

3 75. DEFENDANT's unlawful wage and hour practices manifested, without
4 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
5 implementing a policy and practice that failed to accurately record overtime worked by
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
7 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
9 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
10 workweek.

11 76. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
14 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
15 of the California Labor Code, the Industrial Welfare Commission requirements and other
16 applicable laws and regulations.

17 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
19 receive full compensation for overtime worked.

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

28 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
2 worked that they are entitled to, constituting a failure to pay all earned wages.

3 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
4 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
5 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
6 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
8 failed to accurately record and pay as evidenced by DEFENDANT's business records and
9 witnessed by employees.

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

16 82. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
18 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
19 to not pay employees for their labor as a matter of company policy, practice and procedure, and
20 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
21 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

22 83. In performing the acts and practices herein alleged in violation of California labor
23 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
24 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
25 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
27 disregard for their legal rights, or the consequences to them, and with the despicable intent of
28 depriving them of their property and legal rights, and otherwise causing them injury in order

1 to increase company profits at the expense of these employees.

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

1 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
2 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
4 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
5 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
6 which these employees were required by DEFENDANT to work ten (10) hours of work. As
7 a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
8 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
9 corporate policy and practice.

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

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

19
20 **FIFTH CAUSE OF ACTION**

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

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

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

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

28 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from

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

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

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

20
21 **SIXTH CAUSE OF ACTION**

22 **For Failure to Timely Pay Wages**

23 **[Cal. Lab. Code §§ 204(d) and 210]**

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

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

94. Cal. Lab. Code § 204 provides:

All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

95. Cal. Lab. Code § 204(d) provides:

The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

96. Cal. Lab. Code § 210 provides:

[I]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

97. DEFENDANT from time to time failed to pay PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d).

98. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of one hundred dollars (\$100.00) for the initial pay period in which the violation occurred, and two hundred dollars (\$200.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 210, in an amount according to proof at the time of trial.

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

9 104. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

- 11 (1) gross wages earned,
12 (2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of
14 overtime under subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission,
16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item,
20 (5) net wages earned,
21 (6) the inclusive dates of the period for which the employee is paid,
22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,
26 (8) the name and address of the legal entity that is the employer, and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.

105. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and
the corresponding amount of time worked at each hourly rate. Aside, from the violations
listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized

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

5 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
6 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
7 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
8 expended calculating the correct wages for all missed meal and rest breaks and the amount
9 of employment taxes which were not properly paid to state and federal tax authorities.
10 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
11 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
12 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
13 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
14 226, in an amount according to proof at the time of trial (but in no event more than four
15 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
16 CALIFORNIA LABOR SUB-CLASS herein).

17
18 **NINTH CAUSE OF ACTION**

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

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

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

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

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

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of

1 time, task, piece, Commission basis, or other method of calculation.

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

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

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

10 If an employee not having a written contract for a definite period quits his or
11 her employment, his or her wages shall become due and payable not later than
12 72 hours thereafter, unless the employee has given 72 hours previous notice of
13 his or her intention to quit, in which case the employee is entitled to his or her
14 wages at the time of quitting. Notwithstanding any other provision of law, an
15 employee who quits without providing a 72-hour notice shall be entitled to
16 receive payment by mail if he or she so requests and designates a mailing
17 address. The date of the mailing shall constitute the date of payment for
18 purposes of the requirement to provide payment within 72 hours of the notice
19 of quitting.

20 111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
21 SUB-CLASS Members' employment contract.

22 112. Cal. Lab. Code § 203 provides:

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

113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
these employees who missed meal and rest breaks, as required by law.

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

1 plus interest and statutory costs as allowed by law.

2 **TENTH CAUSE OF ACTION**

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

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

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

6 115. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
7 1-114, supra, as though fully set forth at this point.

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

18 117. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, brings this Representative Action on behalf of the State of California with respect to
21 herself and all individuals who worked for DEFENDANT in California and were classified as
22 non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of January
23 6, 2019 until a date as determined by the Court (the "PAGA PERIOD").

24 118. On January 6, 2020, PLAINTIFF gave written notice by electronic mail to the
25 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
28 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint

1 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
2 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
3 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 119. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
8 to pay minimum wages, (e) failed to provide wages when due, (f) failed to reimburse employees
9 for required expenses, and (g) failed to timely pay earned wages, all in violation of the
10 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 204(d),
11 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and the applicable
12 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
13 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
14 Attorney General Act of 2004 as the representative of the State of California for the illegal
15 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 120. All of the conduct and violations alleged herein occurred during the
17 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
18 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
19 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
20 2018 AJDAR 12157 (Certified for Publication 12/19/18).

21
22 **PRAYER FOR RELIEF**

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

25 1. On behalf of the CALIFORNIA CLASS:

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

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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, Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and 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) 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;
- D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

- 1 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
2 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
3 costs of suit;
4 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
5 1197; and,
6 H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay
7 period in which a violation occurs and two hundred dollars (\$200) per each
8 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
9 subsequent pay period, for violation of Cal. Lab. Code § 204(d), in accordance
10 with Cal. Lab. Code § 210.
- 11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:
13 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
14 General Act of 2004.
- 15 4. On all claims:
16 A) An award of interest, including prejudgment interest at the legal rate;
17 B) Such other and further relief as the Court deems just and equitable; and,
18 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
20 §2802.

21 Dated: April 8, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

22
23
24 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: April 8, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

January 6, 2020

CA2004

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL AND FEDERAL
EXPRESS TO DEFENDANT**

Labor and Workforce Development Agency
Online Filing

Air Canada Corporation
Certified Mail # 70192280000189178281
C T Corporation System
1015 15th Street NW, Suite 1000
Washington, District of Columbia 20005

Air Canada Corporation
FedEx # 777406784836
7373 DE LA CÔTE VERTU BLVD. WEST
SAINT LAURENT QC H4S 1Z3
Canada

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202,
203, 204, 204(d), 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission
Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Air Canada Corporation in California and classified as non-exempt employees during the time period of January 6, 2019 until a date as determined by the Court. Our offices represent Plaintiff Leslie Senoren (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Air Canada Corporation (“Defendant”). Plaintiff was employed by Defendant from April of 2019 to October of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Further, Plaintiff contends Defendant failed to timely pay earned wages to her, in violation of Labor Code section 204(d). Specifically, Defendant from time to time failed

to pay Plaintiff and other Aggrieved Employees all wages owed to them within seven (7) days of the close of the payroll 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, 204(d), 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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3 2255 Calle Clara

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Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 LESLIE SENOREN, an individual, on behalf of
herself and on behalf of all persons similarly
11 situated,

12
13 Plaintiff,

14 vs.

15 AIR CANADA CORPORATION, a
Corporation; and DOES 1 through 50,
16 inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF CAL. LAB. CODE § 204(d);
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
9. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Air Canada Corporation (“DEFENDANT”) is a Corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in the
8 state of California.

9 2. DEFENDANT is the flag carrier and the largest airline of Canada by fleet size and
10 passengers carried. The airline, founded in 1937, provides scheduled and charter air transport
11 for passengers and cargo.

12 3. PLAINTIFF was employed by DEFENDANT in California at LAX Airport as a
13 Customer Service Agent from April of 2019 to October of 2019 and was at all times classified
14 by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

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

24 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
27 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
28 practice alleged herein was an unlawful, unfair and deceptive business practice whereby

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

7 6. 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 7. 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 members of the
22 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
23 Defendants' agents, servants and/or employees.

24 25 **THE CONDUCT**

26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
27 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
28 meaning the time during which an employee is subject to the control of an employer, including

1 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
2 and CALIFORNIA CLASS Members to work without paying them for all the time they were
3 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
4 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
5 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
6 should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other
7 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
8 regularly working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice
10 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
11 evidenced by DEFENDANT's business records.

12 9. As a result of their rigorous work schedules, PLAINTIFF and other
13 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
14 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
15 other CALIFORNIA CLASS Members were required from time to time to perform work as
16 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
17 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
18 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
19 which these employees were required by DEFENDANT to work ten (10) hours of work.
20 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
21 without additional compensation and in accordance with DEFENDANT's strict corporate policy
22 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
23 production levels for each employee at the busy airports they operated at.

24 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS Members were also required from time to time 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
28 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes

1 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
4 not provided with one hour wages in lieu thereof.

5 11. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
6 employment are due and payable twice during each calendar month, on days designated in
7 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
8 requires employers to pay employees all wages owed within seven (7) days of the close of the
9 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
10 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
11 the payroll period.

12 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
13 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
14 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
15 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
16 all 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. As such, DEFENDANT knew or should have
20 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
21 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
22 Members forfeited time worked by working without their time being accurately recorded and
23 without compensation at the applicable minimum wage and overtime wage rates. To the extent
24 that the time worked off the clock did not qualify for overtime premium payment,
25 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
26 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

27 13. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses

1 incurred by PLAINTIFF and other CALIFORNIA CLASS Members 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 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
10 Members 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 CALIFORNIA CLASS Members 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 members of the
17 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
18 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
19 benefit of DEFENDANT.

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

1 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
2 statements which violated Cal. Lab. Code § 226.

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

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

23 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
24 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
25 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT
26 did not have a policy or practice which provided timely off-duty meal and rest breaks to
27 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
28 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved

1 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
2 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
3 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
4 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
5 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
6 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
7 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor
8 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
9 the sum or value of \$75,000.

10 11 **JURISDICTION AND VENUE**

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

16 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
18 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
19 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
20 committed the wrongful conduct herein alleged in this County against members of the
21 CALIFORNIA CLASS.

22 23 **THE CALIFORNIA CLASS**

24 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
27 all individuals who are or previously were employed by DEFENDANT in California and
28 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the

1 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
2 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
3 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
4 (\$5,000,000.00).

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

8 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
12 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
13 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
14 permits or suffers to permit this work.

15 24. DEFENDANT has the legal burden to establish that each and every
16 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
17 required by California laws. The DEFENDANT, however, as a matter of uniform and
18 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
19 PERIOD and still fails to have in place a policy or practice to ensure that each and every
20 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
21 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
22 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
23 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

24 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
27 California law by:

28 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.

1 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
2 deceptively having in place company policies, practices and procedures
3 that uniformly and systematically failed to record and pay PLAINTIFF
4 and the other members of the CALIFORNIA CLASS for all time worked,
5 including minimum wages owed and overtime wages owed for work
6 performed by these employees;

7 (b) Committing an act of unfair competition in violation of the UCL, by
8 failing to provide the PLAINTIFF and the other members of the
9 CALIFORNIA CLASS with the legally required meal and rest periods;

10 (c) Committing an act of unfair competition in violation of the UCL, by
11 failing to provide the PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with timely wages in violation of Cal. Lab. Code
13 Section 204(d); and,

14 (d) Committing an act of unfair competition in violation of the California
15 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
16 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
17 the CALIFORNIA CLASS members with necessary expenses incurred in
18 the discharge of their job duties.

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

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

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

28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
2 other members of the CALIFORNIA CLASS, was classified as a non-
3 exempt employee paid on an hourly basis who was subjected to the
4 DEFENDANT's deceptive practice and policy which failed to provide the
5 legally required meal and rest periods to the CALIFORNIA CLASS and
6 thereby systematically underpaid compensation to PLAINTIFF and
7 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
8 result of DEFENDANT's employment practices. PLAINTIFF and the
9 members of the CALIFORNIA CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, unfair and pervasive
11 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

- 26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA CLASS which would establish
28 incompatible standards of conduct for the parties opposing the

CALIFORNIA CLASS; and/or,

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
2 the business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to bring
4 a efficient and rapid conclusion to all litigation of all wage and hour
5 related claims arising out of the conduct of DEFENDANT as to the
6 members of the CALIFORNIA CLASS.

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

12

13 **THE CALIFORNIA LABOR SUB-CLASS**

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

22 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
26 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
28 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and

1 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
2 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
3 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
4 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
5 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 15 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
16 compensation due to members of the CALIFORNIA LABOR SUB-
17 CLASS for missed meal and rest breaks in violation of the California
18 Labor Code and California regulations and the applicable California Wage
19 Order;
- 20 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with accurate
22 itemized wage statements;
- 23 (c) Whether DEFENDANT has engaged in unfair competition by the
24 above-listed conduct;
- 25 (d) The proper measure of damages and penalties owed to the members of the
26 CALIFORNIA LABOR SUB-CLASS; and,
- 27 (e) Whether DEFENDANT's conduct was willful.

28 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
3 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
4 CLASS all wages due for overtime worked, for which DEFENDANT is
5 liable pursuant to Cal. Lab. Code § 1194;
- 6 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFF and the members of the CALIFORNIA
8 LABOR SUB-CLASS the correct minimum wage pay for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
12 itemized statement in writing showing the corresponding correct amount
13 of wages earned by the employee;
- 14 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
17 meal breaks and the legally required off-duty rest breaks;
- 18 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
19 when an employee is discharged or quits from employment, the employer
20 must pay the employee all wages due without abatement, by failing to
21 tender full payment and/or restitution of wages owed or in the manner
22 required by California law to the members of the CALIFORNIA LABOR
23 SUB-CLASS who have terminated their employmentl;
- 24 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA LABOR SUB-CLASS members with necessary
26 expenses incurred in the discharge of their job duties; and,
- 27 (g) Violating Cal. Lab. Code § 204 by failing to pay PLAINTIFF and the
28 CALIFORNIA LABOR SUB-CLASS members timely wages.

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

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

1 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

8 1) Inconsistent or varying adjudications with respect to individual
9 members of the CALIFORNIA LABOR SUB-CLASS which
10 would establish incompatible standards of conduct for the parties
11 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

24 (c) Common questions of law and fact predominate as to the members of the
25 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
26 violations of California Law as listed above, and predominate over any
27 question affecting only individual CALIFORNIA LABOR SUB-CLASS
28 Members, and a Class Action is superior to other available methods for

1 the fair and efficient adjudication of the controversy, including
2 consideration of:

- 3 1) The interests of the members of the CALIFORNIA LABOR SUB-
4 CLASS in individually controlling the prosecution or defense of
5 separate actions in that the substantial expense of individual
6 actions will be avoided to recover the relatively small amount of
7 economic losses sustained by the individual CALIFORNIA
8 LABOR SUB-CLASS Members when compared to the substantial
9 expense and burden of individual prosecution of this litigation;
- 10 2) Class certification will obviate the need for unduly duplicative
11 litigation that would create the risk of:
 - 12 A. Inconsistent or varying adjudications with respect to
13 individual members of the CALIFORNIA LABOR SUB-
14 CLASS, which would establish incompatible standards of
15 conduct for the DEFENDANT; and/or,
 - 16 B. Adjudications with respect to individual members of the
17 CALIFORNIA LABOR SUB-CLASS would as a practical
18 matter be dispositive of the interests of the other members
19 not parties to the adjudication or substantially impair or
20 impede their ability to protect their interests;
- 21 3) In the context of wage litigation because a substantial number of
22 individual CALIFORNIA LABOR SUB-CLASS Members will
23 avoid asserting their legal rights out of fear of retaliation by
24 DEFENDANT, which may adversely affect an individual's job
25 with DEFENDANT or with a subsequent employer, the Class
26 Action is the only means to assert their claims through a
27 representative; and,
- 28 4) A class action is superior to other available methods for the fair

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

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

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

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

15

16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

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

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

20 40. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

22 Complaint.

23 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.

24 Code § 17021.

25 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines

26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

27 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair

28 competition as follows:

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

5 Cal. Bus. & Prof. Code § 17203.

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

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

19 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
20 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
21 mandated meal and rest periods, the required amount of compensation for missed meal and rest
22 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
23 reimburse all necessary business expenses incurred, due to a systematic business practice that
24 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
25 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
26 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
27 including restitution of wages wrongfully withheld.

28 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,

1 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
2 other members of the CALIFORNIA CLASS to be underpaid during their employment with
3 DEFENDANT.

4 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
5 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
6 to provide all legally required meal breaks to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

8 48. Therefore, PLAINTIFF 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 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
11 for each workday in which a second off-duty meal period was not timely provided for each ten
12 (10) hours of work.

13 49. PLAINTIFF further demands on behalf of himself and each member of the
14 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
15 duty paid rest period was not timely provided as required by law.

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
28 and do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
3 unfair business practices, including earned but unpaid wages for all time worked.

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

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

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

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

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

20 **and Against All Defendants)**

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

24 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
27 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
28 Members.

1 57. 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 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.

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

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

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

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

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

27 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than

1 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

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

70. 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 pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

1 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
2 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

3 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
5 DEFENDANT and were not paid for all the time they worked, including overtime work.

6 75. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
8 result of implementing a uniform policy and practice that failed to accurately record overtime
9 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
10 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
12 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
13 workweek.

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

20 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
22 receive full compensation for overtime worked.

23 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to the
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
27 subject to a valid collective bargaining agreement that would preclude the causes of action
28 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself

1 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
2 negotiable, non-waiveable rights provided by the State of California.

3 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
5 worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

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

26 83. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
28 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT

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

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

17
18 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
27 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
28 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and

1 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
2 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
3 duties for the legally required off-duty meal periods. As a result of their rigorous work
4 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
5 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
6 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
7 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
8 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
9 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
10 which these employees were required by DEFENDANT to work ten (10) hours of work. As
11 a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
12 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
13 strict corporate policy and practice.

14 87. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
15 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
16 CLASS Members who were not provided a meal period, in accordance with the applicable
17 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
18 each workday that a meal period was not provided.

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

23 ///

24 ///

25 ///

26 ///

27 ///

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

6 89. 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 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
10 time to time required to work in excess of four (4) hours without being provided ten (10) minute
11 rest periods. Further, these employees from time to time were denied their first rest periods of
12 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
13 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
15 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-
16 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
17 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
18 Members were periodically denied their proper rest periods by DEFENDANT and
19 DEFENDANT's managers.

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

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Timely Pay Wages**

3 **[Cal. Lab. Code §§ 204(d) and 210]**

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-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 94. Cal. Lab. Code § 204 provides:

10 All wages. . . earned by any person in any employment are due and payable twice
11 during each calendar month, on days designated in advance by the employer as the
12 regular paydays.

13 95. Cal. Lab. Code § 204(d) provides:

14 The requirements of this section shall be deemed satisfied by the payment of wages
15 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
16 seven calendar days following the close of the payroll period.

17 96. Cal. Lab. Code § 210 provides:

18 [I]n addition to, and entirely independent and apart from, any other penalty provided
19 in this article, every person who fails to pay the wages of each employee as provided in
20 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
21 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars
23 (\$200) for each failure to pay each employee, plus 25 percent of the amount
24 unlawfully withheld.

25 97. DEFENDANT from time to time failed to pay PLAINTIFF and members of
26 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
27 payroll period in accordance with Cal. Lab. Code § 204(d).

28 98. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
SUB-CLASS may elect to recover liquidated damages of one hundred dollars (\$100.00) for
the initial pay period in which the violation occurred, and two hundred dollars (\$200.00) for
each violation in a subsequent pay period pursuant to Cal. Lab. Code § 210, in an amount
according to proof at the time of trial.

EIGHTH CAUSE OF ACTION
For Failure to Provide Accurate Itemized Statements
[Cal. Lab. Code § 226]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

99. 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.

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

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

101. When DEFENDANT did not accurately record PLAINTIFF’s and other CALIFORNIA CLASS Members’ minimum and overtime wages earned and/or missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees.

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount

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

9
10 **NINTH CAUSE OF ACTION**

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

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

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

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

18 104. Cal. Lab. Code § 200 provides that:

19 As used in this article:

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

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

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

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

28 If an employee not having a written contract for a definite period quits his or

1 her employment, his or her wages shall become due and payable not later than
2 72 hours thereafter, unless the employee has given 72 hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her
4 wages at the time of quitting. Notwithstanding any other provision of law, an
5 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.

6 107. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
7 SUB-CLASS Members' employment contract.

8 108. Cal. Lab. Code § 203 provides:

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

12 109. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
13 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
14 these employees who missed meal and rest breaks, as required by law.

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

22 **PRAYER FOR RELIEF**

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

25 1. On behalf of the CALIFORNIA CLASS:

26 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

28 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 and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and 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) 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;

D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

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

costs of suit;

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

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(d), in accordance with Cal. Lab. Code § 210.

3. On all claims:

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

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

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

Dated: January 6, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: January 6, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff