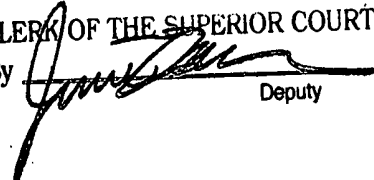




FILED
ALAMEDA COUNTY

OCT 07 2020

CLERK OF THE SUPERIOR COURT
By  Deputy

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JAH JACKSON, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

DECATHLON USA LLC, a Limited
Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. RG20073024

**FIRST AMENDED 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

FAX FILE

OCT 07 REC'D

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

4
5 **THE PARTIES**

6 1. Defendant Decathlon USA LLC ("DEFENDANT") is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT is a French sporting goods retailer.

10 3. PLAINTIFF was employed by DEFENDANT in California from February of
11 2019 to October of 2019 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

21 22 THE CONDUCT

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

1 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
3 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and
4 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
5 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
6 requirements. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANT
7 engages in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to
8 perform work off the clock after clocking out in that DEFENDANT, as a condition of
9 employment, required these employees from time to time to wait for and submit to loss
10 prevention inspections after clocking out at the end of each scheduled shift, and if they left the
11 store during their off duty meal periods, for which DEFENDANT did not provide compensation
12 for time spent waiting for and submitting to DEFENDANT's loss prevention inspections off the
13 clock. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum
14 wage, overtime wage compensation, and meal break wages, by working without their time being
15 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
16 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
17 worked, is evidenced by DEFENDANT's business records.

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

1 production levels for each employee at the busy airports they operated at.

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

22 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
23 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
24 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
26 all time worked, meaning the time during which an employee was subject to the control of an
27 employer, including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT required these employees to work off the clock without paying them for all the

1 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
2 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
3 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
4 Members forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable minimum wage and overtime wage rates. To the extent
6 that the time worked off the clock did not qualify for overtime premium payment,
7 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
8 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

27 14. 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 15. 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, including but not
16 limited to downloading an application on their personal cell phones that Defendant then used
17 for scheduling purposes. As a result, in the course of their employment with DEFENDANT,
18 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
19 expenses which included, but were not limited to, costs related to the use of their personal
20 cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

4 17. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond
5 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
6 former employees) have the right to inspect personnel records maintained by the employer
7 “related to the employee’s performance or to any grievance concerning the employee.”
8 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
9 requested his employment file via certified mail on October 21, 2019 and on November 22,
10 2019 and DEFENDANT failed to respond each time. As a result, PLAINTIFF is now entitled
11 to a statutory penalty of \$750 and an award of attorneys’ fees and costs for bringing this action.

12 18. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT
14 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
15 CALIFORNIA CLASS for missed meal and rest periods. This policy and practice of
16 DEFENDANT is intended to purposefully avoid the payment for all time worked as required
17 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
18 over competitors who complied with the law. To the extent equitable tolling operates to toll
19 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
20 PERIOD should be adjusted accordingly.

21 19. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
23 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
24 engaging in a company-wide policy and procedure which failed to accurately calculate and
25 record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA CLASS
26 Members. The proper recording of these employees’ missed meal and rest breaks is the
27 DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the obligation
28 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required

1 compensation for work performed by the members of the CALIFORNIA CLASS and violated
2 the California Labor Code and regulations promulgated thereunder as herein alleged.

3 20. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
4 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
5 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
6 did not have a policy or practice which provided timely off-duty meal and rest breaks to
7 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
8 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
9 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
10 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
11 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
12 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
13 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
14 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
15 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
16 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
17 the sum or value of \$75,000.

18 19 JURISDICTION AND VENUE

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

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

THE CALIFORNIA CLASS

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

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

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

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

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

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

- 5 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
6 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
7 deceptively having in place company policies, practices and procedures
8 that failed to record and pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS for all time worked, including minimum wages
10 owed and overtime wages owed for work performed by these employees;
- 11 (b) Committing an act of unfair competition in violation of the UCL, by
12 failing to provide the PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with the legally required meal and rest periods;
14 and,
- 15 (c) Committing an act of unfair competition in violation of the California
16 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
17 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA CLASS members with necessary expenses incurred in
19 the discharge of their job duties.

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

- 22 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of
24 their claims as a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply to every member of the CALIFORNIA 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 underpaid compensation to PLAINTIFF and CALIFORNIA
7 CLASS. PLAINTIFF sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFF and the members of
9 the CALIFORNIA CLASS were and are similarly or identically harmed
10 by the same unlawful, deceptive and unfair misconduct engaged in by
11 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 30. 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

1 CALIFORNIA CLASS; and/or,

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

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

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

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

26 1) The interests of the members of the CALIFORNIA CLASS in
27 individually controlling the prosecution or defense of separate
28 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 31. 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 applied with respect to the CALIFORNIA CLASS;
- 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 CLASS because in the context of employment litigation a substantial
8 number of individual CALIFORNIA CLASS Members will avoid
9 asserting their rights individually out of fear of retaliation or adverse
10 impact on their employment;
- 11 (c) The members of the CALIFORNIA CLASS are so numerous that it is
12 impractical to bring all members of the CALIFORNIA CLASS before the
13 Court;
- 14 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
15 able to obtain effective and economic legal redress unless the action is
16 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 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 CLASS for the injuries sustained;
- 25 (g) DEFENDANT has acted or refused to act on grounds generally applicable
26 to the CALIFORNIA CLASS, thereby making final class-wide relief
27 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 28 (h) The members of the CALIFORNIA CLASS are readily ascertainable from

1 the business records of DEFENDANT; and,

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

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

11
12 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

27 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
28 under California law by:

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

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

- 28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are

1 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
2 Members is impracticable and the disposition of their claims as a class
3 will benefit the parties and the Court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
2 CLASS as a whole;

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

20 43. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 may make such orders or judgments, including the appointment of a receiver, as
may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be

1 necessary to restore to any person in interest any money or property, real or
2 personal, which may have been acquired by means of such unfair competition.
3 Cal. Bus. & Prof. Code § 17203.

4 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Industrial Wage Order(s), the California Code of Regulations and the California
7 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5,
8 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
9 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
10 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

1 DEFENDANT.

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

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

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

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

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

25 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
26 and do, seek such relief as may be necessary to restore to them the money and property which
27 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and

1 unfair business practices, including earned but unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

24 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. As such, during the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked

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

2 67. 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 68. 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 elected, either through intentional malfeasance or gross nonfeasance,
11 to not pay employees for their labor as a matter of company policy, practice and procedure, and
12 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
13 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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

5
6 **THIRD CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

8 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

14 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
16 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
17 these employees for all overtime worked, including, work performed in excess of eight (8)
18 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
19 workweek.

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

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

26 75. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage and overtime compensation and interest thereon, together with the
28 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for

1 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

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

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

14 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 elected, either through intentional malfeasance or gross nonfeasance,
22 to not pay employees for their labor as a matter of company policy, practice and procedure, and
23 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
24 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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

16
17 **FOURTH CAUSE OF ACTION**

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

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

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

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

25 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
28 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR

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

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

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

22
23 **FIFTH CAUSE OF ACTION**

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

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

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

28 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
2 of this Complaint.

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

14 93. DEFENDANT further violated 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 rest period, in accordance with the applicable Wage
17 Order, one additional hour of compensation at each employee's regular rate of pay for each
18 workday that rest period was not provided.

19 94. 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 **SIXTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

28 95. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members

1 reallege and incorporate by this reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

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

4 An employer shall indemnify his or her employee for all necessary
5 expenditures or losses incurred by the employee in direct consequence of the
6 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.

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

25 98. PLAINTIFF therefore demands reimbursement for expenditures or losses
26 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
27 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
28

1 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

2
3 **SEVENTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

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

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

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

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

1 the corresponding amount of time worked at each hourly rate. Aside, from the violations
2 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
3 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
4 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
6 § 226.

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

19
20 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

1 As used in this article:

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

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

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

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

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

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

18 108. Cal. Lab. Code § 203 provides:

19 If an employer willfully fails to pay, without abatement or reduction, in
20 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
21 employee who is discharged or who quits, the wages of the employee shall
22 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.

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

26 110. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
27 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
28 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time

1 of termination for all employees who terminated employment during the CALIFORNIA
2 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
3 plus interest and statutory costs as allowed by law.

4
5 **NINTH CAUSE OF ACTION**

6 **For Failure to Provide Personnel Files**

7 **[Cal. Lab. Code § 1198.5]**

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

9 111. Plaintiff Salazar incorporates by reference the allegations set forth in the
10 previous paragraph of this Complaint as though fully set forth at this point.

11 112. On October 21, 2019, November 22, 2019, PLAINTIFF's counsel of record,
12 as PLAINTIFF's legal representative caused written requests via certified mail to be
13 delivered to DEFENDANT for PLAINTIFF's personnel and employment records, including
14 but not limited to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and
15 (4) PLAINTIFF's complete employment file.

16 113. Defendant failed to provide and/or make available to PLAINTIFF his
17 personnel records, payroll records, employment contracts, and entire employment file within
18 thirty (30) of all her requests stated above. In fact, as of the filing of this Complaint,
19 DEFENDANT still has not provided PLAINTIFF his personnel records, pay stubs, and
20 employment file and DEFENDANT has failed to pay PLAINTIFF the statutory penalty in
21 the amount of \$750.

22 114. DEFENDANT has repeatedly violated Cal. Lab. Code Section 1198.5 by
23 failing to respond and provide PLAINTIFF with his employment file. Section 1198.5 states
24 that employees (and former employees) have the right to inspect personnel records
25 maintained by the employer "related to the employee's performance or to any grievance
26 concerning the employee." Employers must allow inspection or copying within thirty (30)
27 days of the request. PLAINTIFF requested his employment file via certified mail and
28 DEFENDANT failed to respond each time. As a result, PLAINTIFF is now entitled to and

1 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a
2 statutory penalty of \$750, and an award of attorneys' fees and costs for bringing this action.

3 **TENTH CAUSE OF ACTION**

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

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

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

7 115. PLAINTIFF incorporates by reference the allegations set forth in the prior
8 paragraphs as though fully set forth at this point.

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

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

25 118. On February 19, 2020, PLAINTIFF gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference

1 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
2 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 119. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
8 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
9 wages, (d) failed to pay minimum wages, (e) failed to pay wages when due, (f) failed to
10 reimburse employees for required expenses, and (g) failed to provide personnel files, all in
11 violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
12 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5,
13 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties
14 as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as
15 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
16 the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES.

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

23 **PRAYER FOR RELIEF**

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

26
27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code
§558(a)(3).

- 1 1. On behalf of the CALIFORNIA CLASS:
 - 2 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
 - 3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - 4 B) An order temporarily, preliminarily and permanently enjoining and restraining
 - 5 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - 6 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
 - 7 withheld from compensation due to PLAINTIFF and the other members of the
 - 8 CALIFORNIA CLASS; and,
 - 9 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
 - 10 for restitution of the sums incidental to DEFENDANT's violations due to
 - 11 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 12 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - 13 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
 - 14 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
 - 15 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - 16 B) Compensatory damages, according to proof at trial, including compensatory
 - 17 damages for minimum and overtime compensation due PLAINTIFF and the other
 - 18 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
 - 19 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
 - 20 statutory rate;
 - 21 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
 - 22 in which a violation occurs and one hundred dollars (\$100) per each member of
 - 23 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
 - 24 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
 - 25 an award of costs for violation of Cal. Lab. Code § 226;
 - 26 D) The wages of all terminated employees from the CALIFORNIA LABOR
 - 27 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
 - 28 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

- 1 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
3 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
4 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
5 costs of suit;
6 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
7 1197; and,
8 H) Injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5,
9 statutory penalties, reasonable costs and attorney's fees.

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

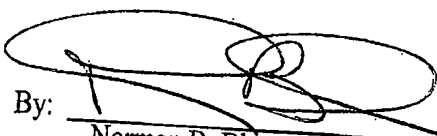
12 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
13 General Act of 2004.

14 4. On all claims:

- 15 A) An award of interest, including prejudgment interest at the legal rate;
16 B) Such other and further relief as the Court deems just and equitable; and,
17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
18 law, including, but not limited to, pursuant to Labor Code §226, §1194, §1198.5
19 and/or §2802.
20

21 Dated: October 7, 2020

22 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOU

23
24 By: 

25 Norman B. Blumenthal
26 Attorneys for Plaintiff
27
28

SIGNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

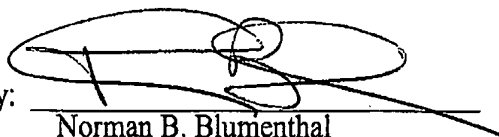
PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: October 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOI

SIGNED

By:



Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Fax: (858) 551-1232

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858)551-1223

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 ALAMEDA**

9
10 JAH JACKSON, an individual, on behalf of
11 himself and on behalf of all persons similarly
situated,

12
13 Plaintiff,

14 vs.

15 DECATHLON USA LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

16
17 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE § 1198.5.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Decathlon USA LLC ("DEFENDANT") is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT is a French sporting goods retailer.

10 3. PLAINTIFF was employed by DEFENDANT in California from February of
11 2019 to October of 2019 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

21 THE CONDUCT

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

1 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
3 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and
4 CALIFORNIA CLASS Members would clock out of DEFENDANT's timekeeping system, in
5 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
6 requirements. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANT
7 engages in the uniform and systematic practice of requiring PLAINTIFF and CALIFORNIA
8 CLASS Members to perform work off the clock after clocking out in that DEFENDANT, as a
9 condition of employment, required these employees from time to time to wait for and submit
10 to loss prevention inspections after clocking out at the end of each scheduled shift, and if they
11 left the store during their off duty meal periods, for which DEFENDANT did not provide
12 compensation for time spent waiting for and submitting to DEFENDANT's loss prevention
13 inspections off the clock. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
14 forfeited minimum wage, overtime wage compensation, and meal break wages, by working
15 without their time being correctly recorded and without compensation at the applicable rates.
16 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
17 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

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

1 production levels for each employee at the busy airports they operated at.

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

22 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
23 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
24 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
26 all time worked, meaning the time during which an employee was subject to the control of an
27 employer, including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT required these employees to work off the clock without paying them for all the

1 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
2 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
3 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
4 Members forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable minimum wage and overtime wage rates. To the extent
6 that the time worked off the clock did not qualify for overtime premium payment,
7 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
8 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

27 14. 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 15. 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, including but not
16 limited to downloading an application on their personal cell phones that Defendant then used
17 for scheduling purposes. As a result, in the course of their employment with DEFENDANT,
18 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
19 expenses which included, but were not limited to, costs related to the use of their personal
20 cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

4 17. DEFENDANT also violated Cal. Lab. Code Section 1198.5 by failing to respond
5 and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and
6 former employees) have the right to inspect personnel records maintained by the employer
7 "related to the employee's performance or to any grievance concerning the employee."
8 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
9 requested his employment file via certified mail on October 21, 2019 and on November 22,
10 2019 and DEFENDANT failed to respond each time. As a result, PLAINTIFF is now entitled
11 to a statutory penalty of \$750 and an award of attorneys' fees and costs for bringing this action.

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

22 19. By reason of this uniform conduct applicable to PLAINTIFF and all
23 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
25 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
26 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
27 CLASS Members. The proper recording of these employees' missed meal and rest breaks is
28 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the

1 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
2 required compensation for work performed by the members of the CALIFORNIA CLASS and
3 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

4 20. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
5 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
6 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
7 did not have a policy or practice which provided timely off-duty meal and rest breaks to
8 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
9 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
10 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
11 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
12 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
13 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
14 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
15 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
16 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
17 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
18 the sum or value of \$75,000.

19 20 **JURISDICTION AND VENUE**

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

25 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
28 in this County and/or conducts substantial business in this County, and (ii) committed the

1 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

2
3 **THE CALIFORNIA CLASS**

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

13 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
14 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
15 accordingly.

16 25. DEFENDANT, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
18 requirements, and the applicable provisions of California law, intentionally, knowingly, and
19 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
20 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
21 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
22 permits or suffers to permit this work.

23 26. DEFENDANT has the legal burden to establish that each and every
24 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
25 required by California laws. The DEFENDANT, however, as a matter of uniform and
26 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid as required by law. This common business practice is

1 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
2 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

4 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
7 California law by:

8 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
9 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
10 deceptively having in place company policies, practices and procedures
11 that uniformly and systematically failed to record and pay PLAINTIFF
12 and the other members of the CALIFORNIA CLASS for all time worked,
13 including minimum wages owed and overtime wages owed for work
14 performed by these employees;

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

19 (c) Committing an act of unfair competition in violation of the California
20 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
21 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
22 the CALIFORNIA CLASS members with necessary expenses incurred in
23 the discharge of their job duties.

24 29. 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 CLASS are so numerous
27 that the joinder of all such persons is impracticable and the disposition of
28 their claims as a class will benefit the parties and the Court;

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

25 30. 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 CLASS will
2 create the risk of:

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

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

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

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

25 (c) Common questions of law and fact exist as to the members of the
26 CALIFORNIA CLASS, with respect to the practices and violations of
27 California law as listed above, and predominate over any question
28 affecting only individual CALIFORNIA CLASS Members, and a Class

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

3 1) The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate
5 actions in that the substantial expense of individual actions will be
6 avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA CLASS Members when
8 compared to the substantial expense and burden of individual
9 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 CLASS, which
14 would establish incompatible standards of conduct for the
15 DEFENDANT; and/or,

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

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

27 4) A class action is superior to other available methods for the fair
28 and efficient adjudication of this litigation because class treatment

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

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

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

1 DEFENDANT are sufficient to adequately compensate the members of
2 the CALIFORNIA CLASS for the injuries sustained;

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

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

17
18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

- 20 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-
22 CLASS for missed meal and rest breaks in violation of the California
23 Labor Code and California regulations and the applicable California Wage
24 Order;
- 25 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with accurate
27 itemized wage statements;
- 28 (c) Whether DEFENDANT has engaged in unfair competition by the

1 above-listed conduct;

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

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

5 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
6 under California law by:

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

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

15 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
16 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
17 itemized statement in writing showing the corresponding correct amount
18 of wages earned by the employee;

19 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
21 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
22 meal breaks and the legally required off-duty rest breaks;

23 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
24 when an employee is discharged or quits from employment, the employer
25 must pay the employee all wages due without abatement, by failing to
26 tender full payment and/or restitution of wages owed or in the manner
27 required by California law to the members of the CALIFORNIA LABOR
28 SUB-CLASS who have terminated their employment; and,

- 1 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
2 the CALIFORNIA LABOR SUB-CLASS members with necessary
3 expenses incurred in the discharge of their job duties.

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

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

1 representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

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

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and

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

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

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

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

1 the CALIFORNIA LABOR SUB-CLASS;

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

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

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

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

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

26 43. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
27 Code § 17021.

28 44. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
2 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The court
6 may make such orders or judgments, including the appointment of a receiver, as
7 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.

8 Cal. Bus. & Prof. Code § 17203.

9 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
10 engage in a business practice which violates California law, including but not limited to, the
11 applicable Industrial Wage Order(s), the California Code of Regulations and the California
12 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5,
13 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
14 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
15 constitute unfair competition, including restitution of wages wrongfully withheld.

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

22 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
24 mandated meal and rest periods, the required amount of compensation for missed meal and rest
25 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
26 reimburse al necessary business expenses incurred, due to a systematic business practice that
27 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
28 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this

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

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

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

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

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

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

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

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

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

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

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

27 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 bring a claim for DEFENDANT's willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
3 Members.

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

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

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

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

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

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

27 65. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

26 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
28 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided

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

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

18 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
20 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
21 these employees for all overtime worked, including, work performed in excess of eight (8)
22 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
23 workweek.

24 73. 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 74. Cal. Lab. Code § 510 further provides that employees in California shall not be
27 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
28 unless they receive additional compensation beyond their regular wages in amounts specified

1 by law.

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

6 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
8 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

26 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
27 from the overtime requirements of the law. None of these exemptions are applicable to the
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
2 subject to a valid collective bargaining agreement that would preclude the causes of action
3 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
4 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
5 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

25 87. 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

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

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

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

26 ///

27 ///

28 ///

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 91. 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 92. 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 from time to time. PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
17 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
19 periods by DEFENDANT and DEFENDANT's managers.

20 93. 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 94. 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 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
2 members for these expenses as an employer is required to do under the laws and regulations
3 of California.

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

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

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

- 19 (1) gross wages earned,
20 (2) total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of
22 overtime under subdivision (a) of Section 515 or any applicable order of the
23 Industrial Welfare Commission,
24 (3) the number of piecerate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis,
26 (4) all deductions, provided that all deductions made on written orders of the
27 employee may be aggregated and shown as one item,
28 (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. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

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

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

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 reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

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

10 As used in this article:

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

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

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

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

20 If an employee not having a written contract for a definite period quits his or
her employment, his or her wages shall become due and payable not later than
21 72 hours thereafter, unless the employee has given 72 hours previous notice of
his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be entitled to
23 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
24 purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

27 108. Cal. Lab. Code § 203 provides:

28 If an employer willfully fails to pay, without abatement or reduction, in

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 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.

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

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

13
14 **NINTH CAUSE OF ACTION**

15 **For Failure to Provide Personnel Files**

16 **[Cal. Lab. Code § 1198.5]**

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

18 111. PLAINTIFF incorporates by reference the allegations set forth in the previous
19 paragraph of this Complaint as though fully set forth at this point.

20 112. On October 21, 2019 and November 22, 2019, PLAINTIFF's counsel of
21 record, as PLAINTIFF's legal representative caused written requests via certified mail to be
22 delivered to DEFENDANT for PLAINTIFF's personnel and employment records, including
23 but not limited to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and
24 (4) PLAINTIFF's complete employment file.

25 113. Defendant failed to provide and/or make available to PLAINTIFF his
26 personnel records, payroll records, employment contracts, and entire employment file within
27 thirty (30) of all her requests stated above. In fact, as of the filing of this Complaint,
28 DEFENDANT still has not provided PLAINTIFF his personnel records, pay stubs, and

1 employment file and DEFENDANT has failed to pay PLAINTIFF the statutory penalty in
2 the amount of \$750.

3 114. DEFENDANT has repeatedly violated Cal. Lab. Code Section 1198.5 by
4 failing to respond and provide PLAINTIFF with his employment file. Section 1198.5 states
5 that employees (and former employees) have the right to inspect personnel records
6 maintained by the employer "related to the employee's performance or to any grievance
7 concerning the employee." Employers must allow inspection or copying within thirty (30)
8 days of the request. PLAINTIFF requested his employment file via certified mail and
9 DEFENDANT failed to respond each time. As a result, PLAINTIFF is now entitled to and
10 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a
11 statutory penalty of \$750, and an award of attorneys' fees and costs for bringing this action.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
21 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
22 withheld from compensation due to PLAINTIFF and the other members of the
23 CALIFORNIA CLASS; and,
24 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
25 for restitution of the sums incidental to DEFENDANT's violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 28 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth

- 1 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
2 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 3 B) Compensatory damages, according to proof at trial, including compensatory
4 damages for minimum and overtime compensation due PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
6 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
7 statutory rate;
- 8 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per each member of
10 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
11 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
12 an award of costs for violation of Cal. Lab. Code § 226;
- 13 D) The wages of all terminated employees from the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 16 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
17 the applicable IWC Wage Order;
- 18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit;
- 21 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
22 1197; and,
- 23 H) Injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5,
24 statutory penalties, reasonable costs and attorney's fees.
- 25 3. On all claims:
- 26 A) An award of interest, including prejudgment interest at the legal rate;
- 27 B) Such other and further relief as the Court deems just and equitable; and,
- 28 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

law, including, but not limited to, pursuant to Labor Code §226, §1194, §1198.5
and/or §2802.

Dated: February 19, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

Dated: February 19, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff