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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 08 2020

BY 
BRIAN GUTIERREZ, DEPUTY

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

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 **CIV DS 2018614**

15 FERNANDO ALCOCER, JR., on behalf of
16 the State of California, as a private
17 attorney general,

18 Plaintiff,

19 vs.

20 DSV SOLUTIONS, LLC, a Limited Liability
21 Company; and DOES 1 through 50, inclusive,

22 Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant DSV Solutions, LLC ("DEFENDANT") is a limited liability company
24 that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. DEFENDANT provides logistic and distribution services. DEFENDANT offers
27 air and ocean freight forwarding, contract logistics, customs brokerage, inbound logistics,
28

1 truckload brokerage, and supply chain management services.

2 6. PLAINTIFF was employed by DEFENDANT in California from October of 2019
3 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
4 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
5 of minimum and overtime wages due for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
11 during the time period of February 17, 2019 until a date as determined by the Court (the "PAGA
12 PERIOD").

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED EMPLOYEES performed work for which they were not compensated for. Prior to clocking in for a shift, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to put on their work uniforms and protective gear, including safety vest, goggles, and gloves. PLAINTIFF and other AGGRIEVED EMPLOYEES were not paid for their work time putting on their work gear. PLAINTIFF and other AGGRIEVED EMPLOYEES were also required to remove their work gear after their scheduled stop times at the end of their scheduled shifts. PLAINTIFF and AGGRIEVED EMPLOYEES were not paid for time donning and doffing their work gear because PLAINTIFF and AGGRIEVED EMPLOYEES were not paid until they were wearing their work uniforms and protective gear at which point PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were permitted to clock into DEFENDANT's timekeeping system. PLAINTIFF
2 and AGGRIEVED EMPLOYEES would clock out of DEFENDANT's timekeeping system, in
3 order to perform additional work for DEFENDANT as required to meet DEFENDANT's job
4 requirements. Specifically, during the PAGA PERIOD, DEFENDANT engages in the practice
5 of requiring PLAINTIFF and AGGRIEVED EMPLOYEES to perform work off the clock after
6 clocking out in that DEFENDANT, as a condition of employment, requires these employees
7 from time to time to wait for and submit to loss prevention inspections after clocking out at the
8 end of each scheduled shift for which DEFENDANT does not provide compensation for time
9 spent waiting for and submitting to DEFENDANT's loss prevention inspections off the clock.
10 As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage,
11 overtime wage compensation, and meal break wages, by working without their time being
12 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
13 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
14 worked, is evidenced by DEFENDANT's business records.

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

27 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were also required from time to time to work in excess of four (4) hours without being provided

1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of
2 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
3 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
4 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
5 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
6 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
7 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
8 to provide employees with off-duty rest periods, which the California Supreme Court defined
9 as time during which an employee is relieved from all work related duties and free from
10 employer control. In so doing, the Court held that the requirement under California law that
11 employers authorize and permit all employees to take rest period means that employers must
12 relieve employees of all duties and relinquish control over how employees spend their time
13 which includes control over the locations where employees may take their rest period.
14 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
15 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
16 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
17 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
18 leave the work premises during their rest period.

19 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
20 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
21 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
23 time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT required these employees to work off the clock without paying them for all the
26 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
28 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited

1 time worked by working without their time being accurately recorded and without compensation
2 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
3 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
4 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
5 1197, and 1197.1.

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

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

27 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
28 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed

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

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

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

27 20. All of the conduct and violations alleged herein occurred during the PAGA
28 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect

1 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
3 AJDAR 12157 (Certified for Publication 12/19/18).

4 **JURISDICTION AND VENUE**

5 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10.

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

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

3 25. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to
6 himself and all individuals who are or previously were employed by DEFENDANT in
7 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
8 during the time period of February 17, 2019 until a date as determined by the Court (the "PAGA
9 PERIOD").

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

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

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

1 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
2 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

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

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

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

14
15 Dated: September 4, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

16
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18 By: 

19 Norman B. Blumenthal
Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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1004

February 17, 2020
CA2074

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency	DSV Solutions, LLC
Online Filing	Certified Mail # 70192280000189178441
	CSC - Lawyers Incorporating Service
	2710 Gateway Oaks Drive, Suite 150N
	Sacramento, CA 95833

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant DSV Solutions, LLC in California and classified as non-exempt employees during the time period of February 17, 2019 until a date as determined by the Court. Our offices represent Plaintiff Fernando Alcocer, Jr. (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant DSV Solutions, LLC (“Defendant”). Plaintiff was employed by Defendant in California from October of 2019 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for all of their time worked, including minimum and overtime wages, and for all of their missed meal and rest breaks. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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6 Attorneys for Plaintiff

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

8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9
10 FERNANDO ALCOCER, JR., an individual,
on behalf of himself and on behalf of all
11 persons similarly situated,

12
13 Plaintiff,

14 vs.

15 DSV SOLUTIONS, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

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17 Defendants.
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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.

DEMAND FOR A JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant DSV Solutions, 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 provides logistic and distribution services. DEFENDANT offers
10 air and ocean freight forwarding, contract logistics, customs brokerage, inbound logistics,
11 truckload brokerage, and supply chain management services.

12 3. PLAINTIFF was employed by DEFENDANT in California from October of 2019
13 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 24 THE CONDUCT

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
5 should have been PLAINTIFF's off-duty meal break. PLAINTIFF and other CALIFORNIA
6 CLASS Members performed work for which they were not compensated for. Prior to clocking
7 in for a shift, PLAINTIFF and other CALIFORNIA CLASS Members were required to put on
8 their work uniforms and protective gear, including safety vest, goggles, and gloves.
9 PLAINTIFF and other CALIFORNIA CLASS Members were not paid for their work time
10 putting on their work gear. PLAINTIFF and other CALIFORNIA CLASS Members were also
11 required to remove their work gear after their scheduled stop times at the end of their scheduled
12 shifts. PLAINTIFF and CALIFORNIA CLASS Members were not paid for time donning and
13 doffing their work gear because PLAINTIFF and CALIFORNIA CLASS Members were not
14 paid until they were wearing their work uniforms and protective gear at which point
15 PLAINTIFF and other CALIFORNIA CLASS Members were permitted to clock into
16 DEFENDANT's timekeeping system. PLAINTIFF and CALIFORNIA CLASS Members
17 would clock out of DEFENDANT's timekeeping system, in order to perform additional work
18 for DEFENDANT as required to meet DEFENDANT's job requirements. Specifically, during
19 the CALIFORNIA CLASS PERIOD, DEFENDANT engages in the uniform and systematic
20 practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work off
21 the clock after clocking out in that DEFENDANT, as a condition of employment, requires these
22 employees from time to time to wait for and submit to loss prevention inspections after clocking
23 out at the end of each scheduled shift for which DEFENDANT does not provide compensation
24 for time spent waiting for and submitting to DEFENDANT's loss prevention inspections off the
25 clock. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum
26 wage, overtime wage compensation, and meal break wages, by working without their time being
27 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
28 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all

1 time worked, is evidenced by DEFENDANT's business records.

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

14 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
16 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
17 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
18 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
19 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
20 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
21 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
22 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
23 Order requires employers to provide employees with off-duty rest periods, which the California
24 Supreme Court defined as time during which an employee is relieved from all work related
25 duties and free from employer control. In so doing, the Court held that the requirement under
26 California law that employers authorize and permit all employees to take rest period means that
27 employers must relieve employees of all duties and relinquish control over how employees
28 spend their time which includes control over the locations where employees may take their rest

1 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
2 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
3 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and was
4 unlawful based on Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS
5 Members could not leave the work premises during their rest period.

6 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
7 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
8 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
10 all time worked, meaning the time during which an employee was subject to the control of an
11 employer, including all the time the employee was permitted or suffered to permit this work.
12 DEFENDANT required these employees to work off the clock without paying them for all the
13 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
14 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
15 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
16 Members forfeited time worked by working without their time being accurately recorded and
17 without compensation at the applicable minimum wage and overtime wage rates. To the extent
18 that the time worked off the clock did not qualify for overtime premium payment,
19 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
20 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

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

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

25 15. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
27 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
28 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for

1 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
2 to purposefully avoid the payment for all time worked as required by California law which
3 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. To the extent equitable tolling operates to toll claims by the
5 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
6 adjusted accordingly.

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

17 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
18 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
19 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
20 did not have a policy or practice which provided timely off-duty meal and rest breaks to
21 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
22 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
23 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
24 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
25 DEFENDANT’s business records. As a result of DEFENDANT not accurately recording all
26 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
27 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
28 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him

1 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
2 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
3 the sum or value of \$75,000.

4 5 **JURISDICTION AND VENUE**

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

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

16 17 **THE CALIFORNIA CLASS**

18 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
21 all individuals who are or previously were employed by DEFENDANT in California and
22 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
23 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
24 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
25 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
26 (\$5,000,000.00).

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

1 accordingly.

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

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

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

20 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
21 California law by:

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

- 1 (b) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods;
4 and,
- 5 (c) Committing an act of unfair competition in violation of the California
6 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
7 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
8 the CALIFORNIA CLASS members with necessary expenses incurred in
9 the discharge of their job duties.

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

- 12 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
13 that the joinder of all such persons is impracticable and the disposition of
14 their claims as a class will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
16 that are raised in this Complaint are common to the CALIFORNIA
17 CLASS will apply uniformly to every member of the CALIFORNIA
18 CLASS;
- 19 (c) The claims of the representative PLAINTIFF are typical of the claims of
20 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
21 other members of the CALIFORNIA CLASS, was classified as a non-
22 exempt employee paid on an hourly basis who was subjected to the
23 DEFENDANT's deceptive practice and policy which failed to provide the
24 legally required meal and rest periods to the CALIFORNIA CLASS and
25 thereby systematically underpaid compensation to PLAINTIFF and
26 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
27 result of DEFENDANT's employment practices. PLAINTIFF and the
28 members of the CALIFORNIA CLASS were and are similarly or

1 identically harmed by the same unlawful, deceptive, unfair and pervasive
2 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA CLASS; and/or,

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

- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
27 act on grounds generally applicable to the CALIFORNIA CLASS, making
28 appropriate class-wide relief with respect to the CALIFORNIA CLASS

1 as a whole in that DEFENDANT uniformly failed to pay all wages due to
2 members of the CALIFORNIA CLASS as required by law;

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

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

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

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

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

1 DEFENDANT; and/or,

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

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

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

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

20 (a) The questions of law and fact common to the CALIFORNIA CLASS
21 predominate over any question affecting only individual CALIFORNIA
22 CLASS Members because the DEFENDANT's employment practices are
23 uniform and systematically applied with respect to the CALIFORNIA
24 CLASS;

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 CLASS because in the context of employment litigation a substantial
28

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

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

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

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

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

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

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

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

27 29. DEFENDANT maintains records from which the Court can ascertain and identify
28 by job title each of DEFENDANT's employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

26 32. DEFENDANT maintains records from which the Court can ascertain and identify
27 by name and job title, each of DEFENDANT's employees who have been systematically,
28 intentionally and uniformly subjected to DEFENDANT's company policy, practices and

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
2 any additional job titles of similarly situated employees when they have been identified.

3 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

1 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

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

21 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
22 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
23 Members is impracticable and the disposition of their claims as a class
24 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 LABOR SUB-CLASS and will apply uniformly to every member of the
28 CALIFORNIA LABOR SUB-CLASS;

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

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

20 37. 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 LABOR
25 SUB-CLASS will create the risk of:

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

opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative

litigation that would create the risk of:

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

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

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

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

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

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

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

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

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

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

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

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

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

24 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT. The
26 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
27 CLASS Members who worked for DEFENDANT in California at any
28 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

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

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

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

15 41. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
17 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

19 Any person who engages, has engaged, or proposes to engage in unfair
20 competition may be enjoined in any court of competent jurisdiction. The court
21 may make such orders or judgments, including the appointment of a receiver, as
22 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.

23 Cal. Bus. & Prof. Code § 17203.

24 42. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Industrial Wage Order(s), the California Code of Regulations and the California
27 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
28 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.

1 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
2 unfair competition, including restitution of wages wrongfully withheld.

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

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

18 45. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

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

26 47. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
28 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay

1 for each workday in which a second off-duty meal period was not timely provided for each ten
2 (10) hours of work.

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

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

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

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

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

26 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

1 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Minimum Wages**

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

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

10 **and Against All Defendants)**

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

14 55. 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
17 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
18 Members.

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

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

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

26 59. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
28 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice

1 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

26 65. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

28 74. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,

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

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

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

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

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

28 79. DEFENDANT failed to accurately pay the PLAINTIFF and the other members

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

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

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

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

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

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

11 12 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

1 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
2 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
3 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
4 in some workdays in which these employees were required by DEFENDANT to work ten (10)
5 hours of work from time to time. As a result, PLAINTIFF and other members of the
6 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
27 time to time required to work in excess of four (4) hours without being provided ten (10) minute
28 rest periods. Further, these employees from time to time were denied their first rest periods of

1 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
2 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
3 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
4 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
6 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
8 periods by DEFENDANT and DEFENDANT's managers.

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

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

18 19 **SIXTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 2802]**

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

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

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

28 An employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the
2 discharge of his or her duties, or of his or her obedience to the directions of
3 the employer, even though unlawful, unless the employee, at the time of
4 obeying the directions, believed them to be unlawful.

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

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

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

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

16
17 **EIGHTH CAUSE OF ACTION**

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

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

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

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

25 101. Cal. Lab. Code § 200 provides that:

26 As used in this article:

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

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

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

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

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

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

21 105. Cal. Lab. Code § 203 provides:

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

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

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 D) The wages of all terminated employees from the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
4 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
5 the applicable IWC Wage Order;
6 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
8 costs of suit; and,
9 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
10 1197.

11 3. On all claims:

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

17 Dated: February 17, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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21 By: _____
22 Norman B. Blumenthal
23 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: February 17, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff