

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID ETTEDGUI, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

WB STUDIO ENTERPRISES INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 2:20-CV-08053-MCS (MAAx)

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY LABOR CODE §§ 1102.5;
10. RETALIATION IN VIOLATION OF PUBLIC POLICY § 1102.5; and,
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

5 6 **THE PARTIES**

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

10 2. DEFENDANT operates as an entertainment company. The Company
 11 engages in the creation, production, distribution, licensing and marketing of all forms of
 12 entertainment and their related businesses.

13 3. PLAINTIFF was employed by DEFENDANT in California from December
 14 4, 2019 to January 4, 2020 as a Tour Guide/Floater and was at all times classified by
 15 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the
 16 legally required meal and rest periods and payment of minimum and overtime wages due
 17 for all time worked.

18 4. PLAINTIFF brings this Class Action on behalf of himself and a California
 19 class, defined as all individuals who are or previously were employed by DEFENDANT
 20 in California as non-exempt employees who were Tour Guides/Floaters (the
 21 “CALIFORNIA CLASS”) at any time during the time period of June 29, 2016 through
 22 May 27, 2021 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for
 23 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
 24 (\$5,000,000.00).

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

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

8 6. The true names and capacities, whether individual, corporate, subsidiary,
9 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
10 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
11 names pursuant to Fed. R. Civ. Proc. 17. PLAINTIFF will seek leave to amend this
12 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
13 they are ascertained. PLAINTIFF is informed and believes, and based thereon alleges,
14 that the Defendants designated herein are legally responsible in some manner for the
15 unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend this
16 complaint to reflect the true names and capacities of the Defendants when they have been
17 ascertained and become known.

18 7. The agents, servants and/or employees of the Defendants and each of them
19 acting on behalf of the Defendants acted within the course and scope of his, her or its
20 authority as the agent, servant and/or employee of the Defendants, and personally
21 participated in the conduct alleged herein on behalf of the Defendants with respect to the
22 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
23 to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF
24 and the other members of the CALIFORNIA CLASS, for the loss sustained as a
25 proximate result of the conduct of the Defendants' agents, servants and/or employees.
26
27
28

THE CONDUCT

1
2 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
3 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
4 worked, meaning the time during which an employee is subject to the control of an
5 employer, including all the time the employee is suffered or permitted to work.
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
7 without paying them for all the time they were under DEFENDANT's control.
8 Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what
9 was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to
10 time interrupted by work assignments while clocked out for what should have been
11 PLAINTIFF's off-duty meal break. As a result, PLAINTIFF and other CALIFORNIA
12 CLASS Members forfeit minimum wage, overtime wage compensation, and meal break
13 wages, by working without their time being correctly recorded and without compensation
14 at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and
15 other CALIFORNIA CLASS Members for all time worked, is evidenced by
16 DEFENDANT's business records.

17 9. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
19 off duty meal breaks and were not fully relieved of duty for their meal periods. With
20 respect to PLAINTIFF, during his shifts on December 24, 2019 and December 26, 2019,
21 PLAINTIFF did not receive a meal period, as evidenced by PLAINTIFF'S time records.
22 PLAINTIFF'S wage statement demonstrate that DEFENDANT failed to provide
23 PLAINTIFF any additional compensation for the forfeited meal periods. PLAINTIFF and
24 other CALIFORNIA CLASS Members were required from time to time to perform work
25 as ordered by DEFENDANT for more than five (5) hours during some shifts without
26 receiving a meal break. With respect to PLAINTIFF, as evidenced by PLAINTIFF's time
27 records, on December 27, 2019, PLAINTIFF recorded a meal period after more than five
28 (5) hours of work and did not receive any additional compensation when PLAINTIFF

1 received a meal period after more than five (5) hours of work. Further, DEFENDANT
2 from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members
3 with a second off-duty meal period for some workdays in which these employees were
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
5 members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
6 compensation and in accordance with DEFENDANT's strict corporate policy and
7 practice. Additionally, during every shift worked by PLAINTIFF and other
8 CALIFORNIA CLASS Members, DEFENDANT required PLAINTIFF and other
9 CALIFORNIA CLASS Members to have their radio/walkie talkies on their person and
10 ready to respond to any calls during what should have been their off duty meal periods.
11 Pursuant to DEFENDANT'S uniform "Walkie Procedures," walkie talkie devices were
12 used to communicate and conveniently contact employees to distribute information
13 crucial to DEFENDANT'S day-to-day operation and report emergency situations
14 expediently to DEFENDANT'S security team. DEFENDANT'S uniform "Walkie
15 Procedure" required that PLAINTIFF and other CLASS MEMBERS keep the radio on
16 their person throughout the course of their entire shift. PLAINTIFF and other
17 CALIFORNIA CLASS Members were instructed that the walkie could not be left in their
18 cart or anywhere else unattended. PLAINTIFF and other CALIFORNIA CLASS
19 Members were further instructed that the walkie could only be turned off at the
20 conclusion of a work shift when it is returned to charging station. The restrictions
21 imposed during PLAINTIFF's and CALIFORNIA CLASS Member's meal breaks
22 transformed these unpaid off duty meal periods into working time where PLAINTIFF and
23 other CALIFORNIA CLASS Members were forced to remain on call and should have
24 been paid.

25 10. DEFENDANT'S Agreement of October 1, 2020 between Warner Bros.
26 Studio Facilities and Office and Professional Employees International Union, Local #174
27 (the "CBA") provides for a meal period to be not less than one-half hour and must be
28 provided not later than six hours after either reporting for work or after the end of a prior

1 meal period. Although the CBA provides for the meal period to be both timely provided
2 and provided with a duration of at least a half hour, the "monetary remedy" is provided
3 only if the meal period is delayed. DEFENDANT'S CBA fails to include a monetary
4 remedy when meal periods are entirely missed or less than one half hour in length. As
5 such, PLAINTIFF's and CALIFORNIA CLASS Members' rights to meal periods are
6 provided by Cal. Lab. Code § 512. As such, if PLAINTIFF and the CALIFORNIA
7 CLASS Members were denied meal periods or received meal periods which were less
8 than one half hour in length, their sole recourse would be to seek penalties under the
9 California Labor Code and relevant wage orders because the CBA did not provide any
10 remedies pertaining to denied meal periods or meal periods which were less than one half
11 hour in length.

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

1 employee from taking a brief walk - five minutes out, five minutes back. Here,
2 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
3 Members from unconstrained walks and was unlawful based on Defendant's rule which
4 stated PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
5 premises during their rest period. Additionally, during every shift worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT required
7 PLAINTIFF and other CALIFORNIA CLASS Members to have their radio/walkie talkies
8 on their person and ready to respond to any calls during what should have been their off
9 duty rest periods. Pursuant to DEFENDANT'S uniform "Walkie Procedures," walkie
10 talkie devices were used to communicate and conveniently contact employees to
11 distribute information crucial to DEFENDANT'S day-to-day operation and report
12 emergency situations expediently to DEFENDANT'S security team. DEFENDANT'S
13 uniform "Walkie Procedure" required that PLAINTIFF and other CALIFORNIA CLASS
14 Members keep the radio on their person throughout the course of their entire shift,
15 including during off-duty rest periods. PLAINTIFF and other CALIFORNIA CLASS
16 Members were instructed that the walkie could not be left in their cart or anywhere else
17 unattended. PLAINTIFF and other CALIFORNIA CLASS Members were further
18 instructed that the walkie could only be turned off at the conclusion of a work shift when
19 it is returned to charging station. The restrictions imposed during PLAINTIFF's and
20 CALIFORNIA CLASS Member's rest periods transformed these unpaid off duty rest
21 periods into working time where PLAINTIFF and other CALIFORNIA CLASS Members
22 were forced to remain on call and should have been paid accordingly.

23 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
24 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for
25 the actual amount of time these employees worked. Pursuant to the Industrial Welfare
26 Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other
27 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
28 employee was subject to the control of an employer, including all the time the employee

1 was permitted or suffered to permit this work. DEFENDANT required these employees
2 to work off the clock without paying them for all the time they were under
3 DEFENDANT's control. As such, DEFENDANT knew or should have known that
4 PLAINTIFF and the other members of the CALIFORNIA CLASS were under
5 compensated for all time worked. PLAINTIFF and the other members of the
6 CALIFORNIA CLASS were not paid for time donning and doffing their work attire
7 because PLAINTIFF and the other members of the CALIFORNIA CLASS were not paid
8 until they were wearing their work attire at their scheduled shift times. Per
9 DEFENDANT'S Basic Guidelines and Work Rules and/or employee handbooks,
10 PLAINTIFF and the other members of the CALIFORNIA CLASS were required to
11 follow a strict dress code which had to be met prior to the start of all work shifts.
12 Specifically, DEFENDANT'S policies required specific clothing to be worn, a company
13 issued badge and lanyard to be worn, specific accessories to be worn including, but not
14 limited to, hair accessories, sunglasses, and jewelry. DEFENDANT'S policies also
15 dictated grooming requirements including acceptable hair styles and cosmetics which may
16 be worn to shifts, as well as fingernail trimming requirements. DEFENDANT'S policies
17 dictated hygiene requirements and tattoo covering protocols as well. Pursuant to
18 DEFENDANT'S uniform policy and procedure, all of DEFENDANT'S clothing,
19 accessory, grooming and hygiene requirements were expected to be fully complied with
20 prior to the start of any shift. Therefore, PLAINTIFF and other CALIFORNIA CLASS
21 Members were not paid for their time donning and doffing their required work attire,
22 accessories, and meeting grooming and hygiene requirements because their pay started
23 and stopped immediately at their scheduled start and stop time. As a result, PLAINTIFF
24 and other CALIFORNIA CLASS Members forfeited time worked by working without
25 their time being accurately recorded and without compensation at the applicable
26 minimum wage and overtime wage rates. To the extent that the time worked off the clock
27 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum
28 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,

1 and 1197.1.

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

13 14. In the course of their employment PLAINTIFF and other CALIFORNIA
14 CLASS Members as a business expense, were required by DEFENDANT to use their
15 own personal cellular phones as a result of and in furtherance of their job duties as
16 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT
17 for the cost associated with the use of their personal cellular phones for DEFENDANT's
18 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required by DEFENDANT to use their personal cellular phones to for work related issues,
20 including but not limited to, using their phones to download an application requested by
21 DEFENDANT to use for scheduling purposes entitled "Snap." The application, "Snap"
22 is an employee scheduling software where employee work schedules were exclusively
23 available for review, confirmation, and modification. As a result, in the course of their
24 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
25 CLASS incurred unreimbursed business expenses which included, but were not limited
26 to, costs related to the use of their personal cellular phones all on behalf of and for the
27 benefit of DEFENDANT.

28 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

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

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

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

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

4 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the
5 legally required off-duty meal and rest breaks to him as required by the applicable Wage
6 Order and Labor Code and failed to pay him all minimum and overtime wages due to him.
7 DEFENDANT did not have a policy or practice which provided timely off-duty meal and
8 rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal
9 and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent
10 him from being relieved of all of his duties for the legally required off-duty meal periods.
11 During his shifts on December 24, 2019 and December 26, 2019, PLAINTIFF did not
12 receive a meal period, as evidenced by PLAINTIFF'S time records. PLAINTIFF'S wage
13 statement demonstrate that DEFENDANT failed to provide PLAINTIFF any additional
14 compensation for the forfeited meal periods on those days. PLAINTIFF was also required
15 from time to time to perform work as ordered by DEFENDANT for more than five (5)
16 hours during some shifts without receiving a meal break. As evidenced by PLAINTIFF's
17 time records, on December 27, 2019, PLAINTIFF recorded a meal period after more than
18 five (5) hours of work and did not receive any additional compensation when PLAINTIFF
19 received a meal period after more than five (5) hours of work. PLAINTIFF therefore
20 forfeited meal breaks without additional compensation and in accordance with
21 DEFENDANT's strict corporate policy and practice. As a result, DEFENDANT's failure
22 to provide PLAINTIFF with the legally required meal periods is evidenced by
23 DEFENDANT's business records. Additionally, during every shift worked by
24 PLAINTIFF, DEFENDANT required PLAINTIFF to have his radio/walkie talkies on his
25 person and ready to respond to any calls during what should have been his off duty meal
26 periods and off duty rest periods. Pursuant to DEFENDANT'S uniform "Walkie
27 Procedures," walkie talkie devices were used to communicate and conveniently contact
28 employees to distribute information crucial to DEFENDANT'S day-to-day operation and

1 report emergency situations expediently to DEFENDANT'S security team.
2 DEFENDANT'S uniform "Walkie Procedure" required that PLAINTIFF keep the radio
3 on his person throughout the course of his entire shift. PLAINTIFF was instructed that
4 the walkie could not be left in their cart or anywhere else unattended. PLAINTIFF was
5 further instructed that the walkie could only be turned off at the conclusion of a work shift
6 when it is returned to charging station. The restrictions imposed during PLAINTIFF's
7 meal breaks and rest breaks transformed these unpaid off duty meal periods and off duty
8 rest periods into working time where PLAINTIFF was forced to remain on call and
9 should have been paid. Additionally, PLAINTIFF was not paid for time spent donning
10 and doffing his work attire because PLAINTIFF was not paid until he was wearing his
11 work attire at his scheduled shift times. Per DEFENDANT'S Basic Guidelines and Work
12 Rules and/or employee handbooks, PLAINTIFF was required to follow a strict dress code
13 which had to be met prior to the start of all work shifts. Specifically, DEFENDANT'S
14 policies required specific clothing to be worn, a company issued badge and lanyard to be
15 worn, specific accessories to be worn including, but not limited to, hair accessories,
16 sunglasses, and jewelry. DEFENDANT'S policies also dictated grooming requirements
17 including acceptable hair styles and cosmetics which may be worn to shifts, as well as
18 fingernail trimming requirements. DEFENDANT'S policies dictated hygiene
19 requirements and tattoo covering protocols as well. Pursuant to DEFENDANT'S uniform
20 policy and procedure, all of DEFENDANT'S clothing, accessory, grooming and hygiene
21 requirements were expected to be fully complied with prior to the start of any shift.
22 PLAINTIFF, therefore, forfeited time worked by working without his time being
23 accurately recorded and without compensation at the applicable minimum wage and
24 overtime wage rates. As a result of DEFENDANT not accurately recording all missed
25 meal and rest periods and/or minimum and overtime wages due, the wage statements
26 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor
27 Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages
28 due to him and DEFENDANT has failed to pay any penalty wages owed to him under

1 California Labor Code Section 203. Additionally, PLAINTIFF began to alert the
2 DEFENDANT of various California Labor Code violations in December of 2019. In or
3 around December of 2019, and continuing through out the rest of PLAINTIFF's
4 employment PLAINTIFF engaged in protected activity by complaining to DEFENDANT
5 of DEFENDANT's illegal employment practices. PLAINTIFF raised complaints of
6 illegality while he worked for DEFENDANT and was believed to be willing to raise
7 complaints, and DEFENDANT retaliated against him by taking adverse employment
8 actions, including employment termination, against him in January of 2020.

9 19. As a proximate result of DEFENDANT'S willful, knowing, and intentional
10 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to
11 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
12 their damage in a sum according to proof. The amount in controversy for PLAINTIFF
13 individually does not exceed the sum or value of \$75,000.

14 15 **JURISDICTION AND VENUE**

16 20. This Action is brought is brought as a Class Action on behalf of similarly
17 situated employees of DEFENDANT pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

18 21. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §
19 1391 because (i) DEFENDANT conducts and conducted substantial business within this
20 judicial district and maintains offices in this judicial district, (ii) the causes of action
21 alleged herein arise in whole or in part in this judicial district, and (iii) DEFENDANT
22 committed wrongful conduct against members of this class in this district. Venue is also
23 proper in this district because the complaint was initially filed in the Superior Court of
24 California, County of Los Angeles, but was later removed by DEFENDANT to this
25 Court.

THE CALIFORNIA CLASS

22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California as non-exempt employees who were Tour Guides/Floaters (the "CALIFORNIA CLASS") at any time during the time period of June 29, 2016 through May 27, 2021 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1 26. The CALIFORNIA CLASS, is so numerous that joinder of all
2 CALIFORNIA CLASS Members is impracticable. PLAINTIFF understands that
3 DEFENDANT employed at least 2,000 current and former non-exempt employees
4 between June 28, 2016 and June 29, 2020.

5 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under
6 California law by:

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

23 28. This Class Action meets the statutory prerequisites for the maintenance of
24 a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so
26 numerous that the joinder of all such persons is impracticable and the
27 disposition of their claims as a class will benefit the parties and the
28 Court because PLAINTIFF understands that DEFENDANT

1 employed at least 2,000 current and former non-exempt employees
2 between June 28, 2016 and June 29, 2020;

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

7 (c) The claims of the representative PLAINTIFF are typical of the claims
8 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
9 the other members of the CALIFORNIA CLASS, was classified as
10 a non-exempt employee paid on an hourly basis who was subjected
11 to the DEFENDANT's deceptive practice and policy which failed to
12 provide the legally required meal and rest periods to the
13 CALIFORNIA CLASS and thereby underpaid compensation to
14 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained
15 economic injury as a result of DEFENDANT's employment
16 practices. PLAINTIFF and the members of the CALIFORNIA
17 CLASS were and are similarly or identically harmed by the same
18 unlawful and deceptive misconduct engaged in by DEFENDANT;
19 and,

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

28 29. In addition to meeting the statutory prerequisites to a Class Action, this

1 action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
2 and/or (3), in that:

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

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

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

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

1 and remedy the conduct declared to constitute unfair
2 competition;

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

9 1) The interests of the members of the CALIFORNIA CLASS in
10 individually controlling the prosecution or defense of separate
11 actions in that the substantial expense of individual actions will
12 be avoided to recover the relatively small amount of economic
13 losses sustained by the individual CALIFORNIA CLASS
14 Members when compared to the substantial expense and
15 burden of individual prosecution of this litigation;

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

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

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

27 3) In the context of wage litigation because a substantial number
28 of individual CALIFORNIA CLASS Members will avoid

1 asserting their legal rights out of fear of retaliation by
2 DEFENDANT, which may adversely affect an individual's job
3 with DEFENDANT or with a subsequent employer, the Class
4 Action is the only means to assert their claims through a
5 representative; and,

- 6 4) A class action is superior to other available methods for the
7 fair and efficient adjudication of this litigation because class
8 treatment will obviate the need for unduly and unnecessary
9 duplicative litigation that is likely to result in the absence of
10 certification of this action pursuant to Fed. R. Civ. Proc.
11 23(b)(2) and/or (3).

12 30. This Court should permit this action to be maintained as a Class Action
13 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

- 14 (a) The questions of law and fact common to the CALIFORNIA CLASS
15 predominate over any question affecting only individual
16 CALIFORNIA CLASS Members because the DEFENDANT's
17 employment practices are applied with respect to the CALIFORNIA
18 CLASS;
- 19 (b) A Class Action is superior to any other available method for the fair
20 and efficient adjudication of the claims of the members of the
21 CALIFORNIA CLASS because in the context of employment
22 litigation a substantial number of individual CALIFORNIA CLASS
23 Members will avoid asserting their rights individually out of fear of
24 retaliation or adverse impact on their employment;
- 25 (c) The members of the CALIFORNIA CLASS are so numerous that it
26 is impractical to bring all members of the CALIFORNIA CLASS
27 before the Court because PLAINTIFF understands that
28 DEFENDANT employed at least 2,000 current and former

1 non-exempt employees between June 28, 2016 and June 29, 2020;

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

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

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

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

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

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

23 31. DEFENDANT maintains records from which the Court can ascertain and
24 identify by job title each of DEFENDANT's employees who as have been intentionally
25 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
26 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
27 of similarly situated employees when they have been identified.
28

THE CALIFORNIA LABOR SUB-CLASS

32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period of time from June 29, 2016 through May 27, 2021 (the “CALIFORNIA CLASS PERIOD”) (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3). The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all

1 CALIFORNIA LABOR SUB-CLASS Members is impracticable as PLAINTIFF
2 understands that DEFENDANT employed at least 2,000 current and former non-exempt
3 employees between June 28, 2016 and June 29, 2020.

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

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

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

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

1197;

- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

38. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every

1 member of the CALIFORNIA LABOR SUB-CLASS;

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

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

23 39. In addition to meeting the statutory prerequisites to a Class Action, this
24 action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
25 and/or (3), in that:

26 (a) Without class certification and determination of declaratory,
27 injunctive, statutory and other legal questions within the class format,
28 prosecution of separate actions by individual members of the

CALIFORNIA LABOR SUB-CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which 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 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

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

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

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

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

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

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

23(b)(2) and/or (3).

40. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

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

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair

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

5 Cal. Bus. & Prof. Code § 17203.

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

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

20 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
21 fraudulent in that DEFENDANT's policy and practice failed to provide the legally
22 mandated meal and rest periods, the required amount of compensation for missed meal
23 and rest periods and overtime and minimum wages owed, failed to timely pay wages, and
24 failed to reimburse all necessary business expenses incurred, due to a business practice
25 that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
26 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
27 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
28 § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

1 §§ 17200, *et seq.*

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

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

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

20
21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

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

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

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

1 57. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
3 California Labor Code and the Industrial Welfare Commission requirements for
4 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF
5 and CALIFORNIA CLASS Members.

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

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

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

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

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

24 63. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual
26 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
27 CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned
28 wages, and other benefits in violation of the California Labor Code, the Industrial

1 Welfare Commission requirements and other applicable laws and regulations.

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

6 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
7 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
8 Members to work without paying them for all the time they were under DEFENDANT's
9 control. As such, during the CALIFORNIA LABOR SUB-CLASS PERIOD,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
11 paid less for time worked that they were entitled to, constituting a failure to pay all earned
12 wages.

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

19 67. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
20 accurately record and pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
21 Members for the actual amount of time these employees worked. DEFENDANT required
22 these employees to work off the clock without paying them for all the time they were
23 under DEFENDANT's control. As such, DEFENDANT knew or should have known that
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
25 under compensated for all time worked. PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS were not paid for time donning and doffing their
27 work attire because PLAINTIFF and the other members of the CALIFORNIA LABOR
28 SUB-CLASS were not paid until they were wearing their work attire at their scheduled

1 shift times. Per DEFENDANT'S Basic Guidelines and Work Rules and/or employee
2 handbooks, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS were required to follow a strict dress code which had to be met prior to the start
4 of all work shifts. Specifically, DEFENDANT'S policies required specific clothing to be
5 worn, a company issued badge and lanyard to be worn, specific accessories to be worn
6 including, but not limited to, hair accessories, sunglasses, and jewelry. DEFENDANT'S
7 policies also dictated grooming requirements including acceptable hair styles and
8 cosmetics which may be worn to shifts, as well as fingernail trimming requirements.
9 DEFENDANT'S policies dictated hygiene requirements and tattoo covering protocols as
10 well. Pursuant to DEFENDANT'S uniform policy and procedure, all of DEFENDANT'S
11 clothing, accessory, grooming and hygiene requirements were expected to be fully
12 complied with prior to the start of any shift. Therefore, PLAINTIFF and other
13 CALIFORNIA LABOR SUB-CLASS Members were not paid for their time donning and
14 doffing their required work attire, accessories, and meeting grooming and hygiene
15 requirements because their pay started and stopped immediately at their scheduled start
16 and stop time. As a result, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
17 Members forfeited time worked by working without their time being accurately recorded
18 and without compensation at the applicable minimum wage rates. DEFENDANT failed
19 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
20 §§ 1194, 1197, and 1197.1.

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

28 69. In performing the acts and practices herein alleged in violation of California

labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

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

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

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

1 prior paragraphs of this Complaint.

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

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

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

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

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

23 77. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
24 accurately record and pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members for the actual amount of time these employees worked. DEFENDANT required
26 these employees to work off the clock without paying them for all the time they were
27 under DEFENDANT's control. As such, DEFENDANT knew or should have known that
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were

1 under compensated for all time worked. PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS were not paid for time donning and doffing their
3 work attire because PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS were not paid until they were wearing their work attire at their scheduled
5 shift times. Per DEFENDANT'S Basic Guidelines and Work Rules and/or employee
6 handbooks, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS were required to follow a strict dress code which had to be met prior to the start
8 of all work shifts. Specifically, DEFENDANT'S policies required specific clothing to be
9 worn, a company issued badge and lanyard to be worn, specific accessories to be worn
10 including, but not limited to, hair accessories, sunglasses, and jewelry. DEFENDANT'S
11 policies also dictated grooming requirements including acceptable hair styles and
12 cosmetics which may be worn to shifts, as well as fingernail trimming requirements.
13 DEFENDANT'S policies dictated hygiene requirements and tattoo covering protocols as
14 well. Pursuant to DEFENDANT'S uniform policy and procedure, all of DEFENDANT'S
15 clothing, accessory, grooming and hygiene requirements were expected to be fully
16 complied with prior to the start of any shift. Therefore, PLAINTIFF and other
17 CALIFORNIA LABOR SUB-CLASS Members were not paid for their time donning and
18 doffing their required work attire, accessories, and meeting grooming and hygiene
19 requirements because their pay started and stopped immediately at their scheduled start
20 and stop time. As a result, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
21 Members forfeited time worked by working without their time being accurately recorded
22 and without compensation at the applicable overtime wage rates.

23 78. DEFENDANT's uniform pattern of unlawful wage and hour practices
24 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS
25 as a whole, as a result of implementing a uniform policy and practice that failed to
26 accurately record overtime worked by PLAINTIFF and other CALIFORNIA LABOR
27 SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including,

1 the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
2 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

21 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less
23 for overtime worked that they are entitled to, constituting a failure to pay all earned
24 wages.

25 83. DEFENDANT failed to accurately pay the PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
27 worked which was in excess of the maximum hours permissible by law as required by
28 Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members

1 of the CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work,
2 overtime as to which DEFENDANT failed to accurately record and pay as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

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

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

26 87. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of all overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against

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

10 **FOURTH CAUSE OF ACTION**

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

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

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

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

18 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to
 19 time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the
 20 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage
 21 Order and Labor Code. The nature of the work performed by PLAINTIFF and
 22 CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from
 23 being relieved of all of their duties for the legally required off-duty meal periods. As a
 24 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
 25 SUB-CLASS Members were from time to time unable to take thirty (30) minute off duty
 26 meal breaks and were not fully relieved of duty for their meal periods. With respect to
 27 PLAINTIFF, during his shifts on December 24, 2019 and December 26, 2019,
 28

1 PLAINTIFF did not receive a meal period, as evidenced by PLAINTIFF'S time records.
2 PLAINTIFF'S wage statement demonstrate that DEFENDANT failed to provide
3 PLAINTIFF any additional compensation for the forfeited meal periods. PLAINTIFF and
4 other CALIFORNIA CLASS Members were required from time to time to perform work
5 as ordered by DEFENDANT for more than five (5) hours during some shifts without
6 receiving a meal break. With respect to PLAINTIFF, as evidenced by PLAINTIFF's time
7 records, on December 27, 2019, PLAINTIFF recorded a meal period after more than five
8 (5) hours of work and did not receive any additional compensation when PLAINTIFF
9 received a meal period after more than five (5) hours of work. Further, DEFENDANT
10 from time to time failed to provide PLAINTIFF and CALIFORNIA LABOR SUB-
11 CLASS Members with a second off-duty meal period for some workdays in which these
12 employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF
13 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
14 breaks without additional compensation and in accordance with DEFENDANT's strict
15 corporate policy and practice. Additionally, during every shift worked by PLAINTIFF
16 and other CALIFORNIA LABOR SUB-CLASS Members, DEFENDANT required
17 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members to have their
18 radio/walkie talkies on their person and ready to respond to any calls during what should
19 have been their off duty meal periods. Pursuant to DEFENDANT'S uniform "Walkie
20 Procedures," walkie talkie devices were used to communicate and conveniently contact
21 employees to distribute information crucial to DEFENDANT'S day-to-day operation and
22 report emergency situations expediently to DEFENDANT'S security team.
23 DEFENDANT'S uniform "Walkie Procedure" required that PLAINTIFF and other
24 CALIFORNIA LABOR SUB-CLASS Members keep the radio on their person
25 throughout the course of their entire shift. PLAINTIFF and other CALIFORNIA
26 LABOR SUB-CLASS Members were instructed that the walkie could not be left in their
27 cart or anywhere else unattended. PLAINTIFF and other CALIFORNIA LABOR SUB-
28 CLASS Members were further instructed that the walkie could only be turned off at the

1 conclusion of a work shift when it is returned to charging station. The restrictions
2 imposed during PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Member's meal
3 breaks transformed these unpaid off duty meal periods into working time where
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were forced to
5 remain on call and should have been paid.

6 90. DEFENDANT'S Agreement of October 1, 2020 between Warner Bros.
7 Studio Facilities and Office and Professional Employees International Union, Local #174
8 (the "CBA") provides for a meal period to be not less than one-half hour and must be
9 provided not later than six hours after either reporting for work or after the end of a prior
10 meal period. Although the CBA provides for the meal period to be both timely provided
11 and provided with a duration of at least a half hour, the "monetary remedy" is provided
12 only if the meal period is delayed. DEFENDANT'S CBA fails to include a monetary
13 remedy when meal periods are entirely missed or less than one half hour in length. As
14 such, PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' rights to meal
15 periods are provided by Cal. Lab. Code § 512. As such, if PLAINTIFF and the
16 CALIFORNIA LABOR SUB-CLASS Members were denied meal periods or received
17 meal periods which were less than one half hour in length, their sole recourse would be
18 to seek penalties under the California Labor Code and relevant wage orders because the
19 CBA did not provide any remedies pertaining to denied meal periods or meal periods
20 which were less than one half hour in length.

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

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

1 and costs of suit.

2
3 **FIFTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

11 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
12 from time to time required to work in excess of four (4) hours without being provided ten
13 (10) minute rest periods. Further, these employees from time to time were denied their
14 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to
15 four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
16 worked of between six (6) and eight (8) hours, and a first, second and third rest period of
17 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
18 time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also
19 not provided with one hour wages in lieu thereof. As a result of their rigorous work
20 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
21 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
22 managers. Additionally, the applicable California Wage Order requires employers to
23 provide employees with off-duty rest periods, which the California Supreme Court
24 defined as time during which an employee is relieved from all work related duties and
25 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
27 means that employers must relieve employees of all duties and relinquish control over
28 how employees spend their time which includes control over the locations where

1 employees may take their rest period. Employers cannot impose controls that prohibit
2 an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA LABOR
4 SUB-CLASS Members from unconstrained walks and was unlawful based on
5 Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members
6 could not leave the work premises during their rest period. Additionally, during every
7 shift worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members,
8 DEFENDANT required PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
9 Members to have their radio/walkie talkies on their person and ready to respond to any
10 calls during what should have been their off duty rest periods. Pursuant to
11 DEFENDANT'S uniform "Walkie Procedures," walkie talkie devices were used to
12 communicate and conveniently contact employees to distribute information crucial to
13 DEFENDANT'S day-to-day operation and report emergency situations expediently to
14 DEFENDANT'S security team. DEFENDANT'S uniform "Walkie Procedure" required
15 that PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members keep the
16 radio on their person throughout the course of their entire shift, including during off-duty
17 rest periods. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
18 were instructed that the walkie could not be left in their cart or anywhere else unattended.
19 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were further
20 instructed that the walkie could only be turned off at the conclusion of a work shift when
21 it is returned to charging station. The restrictions imposed during PLAINTIFF's and
22 CALIFORNIA LABOR SUB-CLASS Member's rest periods transformed these unpaid
23 off duty rest periods into working time where PLAINTIFF and other CALIFORNIA
24 LABOR SUB-CLASS Members were forced to remain on call and should have been paid
25 accordingly.

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

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

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

7 8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

1 respond to work related issues. DEFENDANT's policy, practice and procedure was to
 2 not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
 3 expenses resulting from using their personal cellular phones for DEFENDANT within
 4 the course and scope of their employment for DEFENDANT. These expenses were
 5 necessary to complete their principal job duties. Specifically, PLAINTIFF and other
 6 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use
 7 their personal cellular phones to for work related issues, including but not limited to,
 8 using their phones to download an application requested by DEFENDANT to use for
 9 scheduling purposes entitled "Snap." The application, "Snap" is an employee scheduling
 10 software where employee work schedules were exclusively available for review,
 11 confirmation, and modification. DEFENDANT is estopped by DEFENDANT's conduct
 12 to assert any waiver of this expectation. Although these expenses were necessary
 13 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
 14 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
 15 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
 16 required to do under the laws and regulations of California.

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

21 **SEVENTH CAUSE OF ACTION**

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

23 **[Cal. Lab. Code § 226]**

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

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

1 prior paragraphs of this Complaint.

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

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

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

104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
Code § 226, causing injury and damages to PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

Wrongful Termination

[Wrongful Termination in Violation of Public Policy]

**[Discrimination against employee for filing complaint or otherwise exercising
rights in Violation of Cal. Lab. Code§ 1102.5, *et seq.*]**

(By PLAINTIFF Against All Defendants)

113. PLAINTIFF realleges and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

114. In retaliation for complaining to DEFENDANT of DEFENDANT's violations of law, DEFENDANT retaliated against and wrongfully discharged PLAINTIFF from employment, in violation of Cal. Lab. Code § 1102.5. DEFENDANT committed violations of California's wage and hour law, and when PLAINTIFF complained of such violations to DEFENDANT, PLAINTIFF was subsequently terminated in retaliation.

115. In or around December of 2019, and continuing through out the rest of PLAINTIFF's employment PLAINTIFF engaged in protected activity by complaining to DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's failure to pay proper wages and violation of his weingarten rights, to which PLAINTIFF was entitled.

116. Subsequent to PLAINTIFF's participation in protective activity by complaining to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment practices, DEFENDANT terminated PLAINTIFF's employment with DEFENDANT. As a result, there is a causal link between the protected activity and DEFENDANT's decision to terminate her employment, which is against public policy.

1 117. Cal. Labor Code § 1102.5, *et seq.* prohibits an employer from taking an
 2 adverse employment action against an employee for terminating an employee's
 3 employment for raising complaints of illegality and/or belief that the employee may
 4 disclose illegality.

5 118. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal
 6 termination of her employment, in retaliation for PLAINTIFF's complaining to
 7 DEFENDANT of DEFENDANT's unlawful employment practices.

8 119. The wrongful termination of the employment of PLAINTIFF was and is a
 9 substantial factor in causing harm to PLAINTIFF.

10 **TENTH CAUSE OF ACTION**

11 **Retaliation**

12 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

13 **(By PLAINTIFF Against All Defendants)**

14 120. PLAINTIFF realleges and incorporates by reference, as though fully set
 15 forth herein, the prior paragraphs of this Complaint.

16 121. At all relevant times, Labor Code section 1102.5 was in effect and was
 17 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
 18 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief
 19 that the employee may disclose illegality.

20 122. PLAINTIFF raised complaints of illegality while he worked for
 21 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
 22 retaliated against him by taking adverse employment actions, including employment
 23 termination, against him.

24 123. As a proximate result of DEFENDANT'S willful, knowing, and intentional
 25 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to
 26 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
 27 their damage in a sum according to proof.
 28

124. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

125. DEFENDANT'S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against defendants.

ELEVENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

128. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California as non-exempt employees who were Tour Guides/Floaters ("AGGRIEVED EMPLOYEES") at any time during the time period of February 17, 2019 through May 27, 2021 (the "PAGA PERIOD").

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

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

23
24
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27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each

member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

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

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

3. On behalf of the Ninth and Tenth Causes of Action:

A) For all special damages which were sustained as a result of DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT; and,

B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

5. On all claims:

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

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
3 the law, including, but not limited to, pursuant to Labor Code §226, §1194
4 and/or §2802.

5 Dated: September 15, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

7
8 By: /s/Norman B. Blumenthal
9 Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

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

Dated: September 15, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT #1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

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

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

February 17, 2020

CA2066

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

WB Studio Enterprises Inc.
Certified Mail # 70192280000189178434
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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 WB Studio Enterprises Inc. 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 David Ettedgui (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant WB Studio Enterprises Inc. (“Defendant”). Plaintiff was employed by Defendant in California from December 4, 2019 to January 4, 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.