

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858) 551-1223

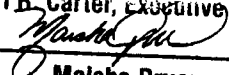
9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

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Superior Court of California
County of Los Angeles

OCT 07 2020

Sherri B. Carter, Executive Office/Clerk
By:  Deputy
Maisha Pryor

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

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

14 MARTINI AVANCENA, an individual, on
15 behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 FTG AEROSPACE INC., a California
20 Corporation; and Does 1 through 50,
21 Inclusive,

22 Defendants.

Case No. **20STCV28767**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

By Fax

DEMAND FOR A JURY TRIAL

Plaintiff Martini Avancena ("PLAINTIFF"), an individual, on behalf of himself and all

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1 other similarly situated current and former employees, alleges on information and belief, except
2 for his own acts and knowledge which are based on personal knowledge, the following:

3
4 **THE PARTIES**

5 1. Defendant FTG Aerospace Inc. (“DEFENDANT”) is a California corporation that
6 at all relevant times mentioned herein conducted and continues to conduct substantial and
7 regular business throughout California.

8 2. DEFENDANT is the supplier of choice for manufacturing high reliability
9 integrated lighting display panels, bezels, keyboards and caution warning annunciators to both
10 the commercial and military transportation markets.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from August of 2018 to January
13 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
14 as a non-exempt employee paid in whole or in part on an hourly basis.

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

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
25 failed to lawfully compensate these employees for all their overtime worked. DEFENDANT’s
26 policy and practice alleged herein is an unlawful, unfair and deceptive business practice
27 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
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1 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
2 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
3 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
4 who have been economically injured by DEFENDANT's past and current unlawful conduct,
5 and all other appropriate legal and equitable relief.

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

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

23 **THE CONDUCT**

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

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

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

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

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

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

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

15. Specifically as to PLAINTIFF he was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period from time to time in which he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the minimum wage and overtime compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

17. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times

1 maintained offices and facilities in this County and/or conducts substantial business in this
2 County, and (ii) committed the wrongful conduct herein alleged in this County against members
3 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

4
5 **THE CALIFORNIA CLASS**

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

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

18 20. The California Legislature has commanded that "all wages... ..earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays", and further that "[a]ny work
21 in excess of eight hours in one workday and any work in excess of 40 hours in any one
22 workweek . . . shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
24 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
25 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
26 professional employees, provided [inter alia] that the employee is primarily engaged in duties
27 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
28 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the

1 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
2 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

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

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

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

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

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

17 (c) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
19 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
20 the CALIFORNIA CLASS members.

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

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

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

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

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

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

24 (a) Without class certification and determination of declaratory, injunctive,
25 statutory and other legal questions within the class format, prosecution of
26 separate actions by individual members of the CALIFORNIA CLASS will
27 create the risk of:
28

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

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

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

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

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

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

3 1) The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate
5 actions in that the substantial expense of individual actions will be
6 avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA CLASS Members when
8 compared to the substantial expense and burden of individual
9 prosecution of this litigation;

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

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

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

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

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

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

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

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

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

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

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

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

13 32. DEFENDANT maintains records from which the Court can ascertain and identify
14 by name and job title, each of DEFENDANT’s employees who have been intentionally
15 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFF will seek leave to amend
16 the complaint to include any additional job titles of similarly situated employees when they
17 have been identified.

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

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

- 22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
23 overtime compensation to members of the CALIFORNIA LABOR SUB-
24 CLASS in violation of the California Labor Code and California
25 regulations and the applicable California Wage Order;
- 26 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
27 entitled to overtime compensation for overtime worked under the overtime
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1 pay requirements of California law;

2 (c) Whether DEFENDANT failed to accurately record the applicable
3 overtime rates for all overtime worked PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS;

5 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with legally
7 required uninterrupted thirty (30) minute meal breaks and rest periods;

8 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS with accurate
10 itemized wage statements;

11 (f) Whether DEFENDANT has engaged in unfair competition by the
12 above-listed conduct;

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

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

16 35. DEFENDANT failed to accurately calculate overtime compensation for the
17 CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the
18 applicable overtime rates for the overtime worked by these employees. All of the
19 CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt
20 employees who were paid on an hourly basis by DEFENDANT according to company
21 procedures as alleged herein above. This business practice was applied to each and every
22 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
23 conduct can be adjudicated on a class-wide basis.

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

26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
28

1 CLASS the correct overtime pay for which DEFENDANT is liable
2 pursuant to Cal. Lab. Code § 1194 & § 1198;

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

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

11 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
13 itemized statement in writing showing all accurate and applicable
14 overtime rates in effect during the pay period and the corresponding
15 amount of time worked at each overtime rate by the employee; and,

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

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

24 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
25 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
26 Members is impracticable and the disposition of their claims as a class
27 will benefit the parties and the Court;

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

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

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

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

27 (a) Without class certification and determination of declaratory, injunctive,
28

1 statutory and other legal questions within the class format, prosecution of
2 separate actions by individual members of the CALIFORNIA LABOR
3 SUB-CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

1 litigation that is likely to result in the absence of certification of
2 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

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

24 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
25 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
26 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
27 competition as follows:

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

5 Cal. Bus. & Prof. Code § 17203.

6 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, for which this
10 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
11 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
12 competition, including restitution of wages wrongfully withheld.

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

19 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
20 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
21 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
22 failed to accurately to record the applicable rate of all overtime worked, and failed to provide
23 the required amount of overtime compensation due to miscalculation of the overtime rate that
24 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
25 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
26 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
27 including restitution of wages wrongfully withheld.

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

5 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
6 deceptive in that DEFENDANT failed to provide mandatory meal and/or rest breaks to
7 PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
28

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

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

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

16
17 **SECOND CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

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

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

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

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

1 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
2 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
3 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
4 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
5 any workweek.

6 57. 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 58. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and/or more than forty (40) hours per
10 workweek unless they receive additional compensation beyond their regular wages in amounts
11 specified by law.

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

16 60. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
18 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
19 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
20 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
21 amount of overtime worked and correct applicable overtime rate for the amount of overtime
22 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
23 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
25 failed to pay these employees the correct applicable overtime wages for all overtime worked.

26 61. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
27 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing
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1 a policy and practice that denied accurate compensation to PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, the work
3 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

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

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

1 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
2 to accurately record and pay using the applicable overtime rate as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

10 68. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
12 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
13 to not pay employees for their labor and DEFENDANT perpetrated this scheme by refusing to
14 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
15 applicable overtime rate.

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

24 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
26 interest, statutory costs, as well as the assessment of any statutory penalties against
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
28

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

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Minimum Wages**

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

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

14 **and Against All Defendants)**

15 71. 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 prior
17 paragraphs of this Complaint.

18 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
20 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
21 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
22 CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

20 84. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
22 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
23 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
24 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
25 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
26 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
27 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

86. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

87. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a meal period, in accordance with the applicable
2 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
3 each workday that a meal period was not provided.

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

8
9 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

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

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

96. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment

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

8
9 **SEVENTH CAUSE OF ACTION**

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

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

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

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

17 98. Cal. Lab. Code § 200 provides that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of every
20 description, whether the amount is fixed or ascertained by the standard of time,
21 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.

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

25 100. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or her
27 employment, his or her wages shall become due and payable not later than 72
28 hours thereafter, unless the employee has given 72 hours previous notice of his
or her intention to quit, in which case the employee is entitled to his or her wages

1 at the time of quitting. Notwithstanding any other provision of law, an employee
2 who quits without providing a 72-hour notice shall be entitled to receive payment
3 by mail if he or she so requests and designates a mailing address. The date of the
mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

4 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
5 CLASS Members' employment contract.

6 102. Cal. Lab. Code § 203 provides:

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

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

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

19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

25 106. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
27 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
28

1 fundamentally a law enforcement action designed to protect the public and not to benefit private
2 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
3 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
4 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
5 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
6 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
7 subject to arbitration.

8 107. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who worked for DEFENDANT in California and classified as non-
12 exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of March 11,
13 2019 until a date as determined by the Court (the "PAGA PERIOD").

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

22 109. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
25 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
26 to pay minimum wages, and (e) failed to pay wages when due, all in violation of the applicable
27 Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
28

226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

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 Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 3 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
4 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
5 pursuant to Cal. Code of Civ. Proc. § 382;
- 6 B) Compensatory damages, according to proof at trial, including compensatory
7 damages for overtime compensation due PLAINTIFF and the other members of
8 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
9 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 10 C) Meal and rest period compensation pursuant to California Labor Code Section
11 226.7 and the applicable IWC Wage Order;
- 12 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
13 in which a violation occurs and one hundred dollars (\$100) per each member of
14 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
15 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
16 an award of costs for violation of Cal. Lab. Code § 226;
- 17 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
18 1197; and,
- 19 F) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
20 CLASS as a penalty from the due date thereof at the same rate until paid or until
21 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

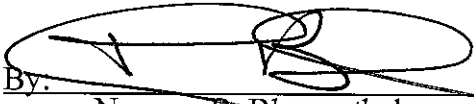
- 24 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
25 General Act of 2004.

26 4. On all claims:

- 27 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 the
3 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.
4

5 Dated: October 5, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
6

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8 
9 By. _____
Norman B. Blumenthal
Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: October 5, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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

March 11, 2020

CA2012

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

FTG Aerospace Inc.
Certified Mail # 70192280000189178540
Andre Khachatourians
20750 Marilla Street
Chatsworth, CA 91311

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), 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 FTG Aerospace Inc. in California and classified as non-exempt employees during the time period of March 11, 2019 until a date as determined by the Court. Our offices represent Plaintiff Martini Avancena (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant FTG Aerospace Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2018 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Further, Defendants failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Moreover, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. 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. Plaintiff and other Aggrieved Employees

perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), 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.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARTINI AVANCENA, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

FTG AEROSPACE INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant FTG Aerospace Inc. (“DEFENDANT”) is a California corporation that
7 at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. DEFENDANT is the supplier of choice for manufacturing high reliability
10 integrated lighting display panels, bezels, keyboards and caution warning annunciators to both
11 the commercial and military transportation markets.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from August of 2018 to January
14 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
15 as a non-exempt employee paid in whole or in part on an hourly basis.

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

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

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

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

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

24 25 **THE CONDUCT**

26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
27 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
28

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

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

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

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

20 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS Members were from time to time also required to work in excess of four
22 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
23 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
24 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
25 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
26 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one hour
28

1 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
4 Order requires employers to provide employees with off-duty rest periods, which the California
5 Supreme Court defined as time during which an employee is relieved from all work related
6 duties and free from employer control. In so doing, the Court held that the requirement under
7 California law that employers authorize and permit all employees to take rest period means that
8 employers must relieve employees of all duties and relinquish control over how employees
9 spend their time which includes control over the locations where employees may take their rest
10 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
11 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
12 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and was
13 unlawful based on Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS
14 Members could not leave the work premises during their rest period.

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

26 14. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
27 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
28

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

10 15. Specifically as to PLAINTIFF he was from time to time unable to take off duty
11 meal and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was
12 required to perform work as ordered by DEFENDANT for more than five (5) hours during a
13 shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide
14 PLAINTIFF with a second off-duty meal period from time to time in which he was required by
15 DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest
16 breaks without additional compensation and in accordance with DEFENDANT’s strict
17 corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the
18 minimum wage and overtime compensation still owed to him or any penalty wages owed to him
19 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
20 not exceed the sum or value of \$75,000.

21 **JURISDICTION AND VENUE**

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

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

5
6 **THE CALIFORNIA CLASS**

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

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

19 20. The California Legislature has commanded that "all wages... ..earned by any
20 person in any employment are due and payable twice during each calendar month, on days
21 designated in advance by the employer as the regular paydays", and further that "[a]ny work
22 in excess of eight hours in one workday and any work in excess of 40 hours in any one
23 workweek . . . shall be compensated at the rate of no less than one and one-half times the
24 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
25 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
26 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
27 professional employees, provided [inter alia] that the employee is primarily engaged in duties
28 that meet the test of the exemption, [and] customarily and regularly exercises discretion and

1 independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the
2 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
3 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

22 23. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
23 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
24 employee for all overtime worked at the applicable rate, as required by California Labor Code
25 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
26 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
27 as to include all earnings in the overtime compensation calculation as required by California
28

1 Labor Code §§ 510, *et seq.*

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

4 25. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
5 law by:

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

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

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

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

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28

1 that are raised in this Complaint are common to the CALIFORNIA
2 CLASS will apply to every member of the CALIFORNIA CLASS;

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

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

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

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

1 create the risk of:

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

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

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

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

1 affecting only individual CALIFORNIA CLASS Members, and a Class
2 Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

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

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

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

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

22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting
24 their legal rights out of fear of retaliation by DEFENDANT, which
25 may adversely affect an individual's job with DEFENDANT or
26 with a subsequent employer, the Class Action is the only means to
27 assert their claims through a representative; and,
28

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

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

8 (a) The questions of law and fact common to the CALIFORNIA CLASS
9 predominate over any question affecting only individual CALIFORNIA
10 CLASS Members because the DEFENDANT's employment practices are
11 applied with respect to the CALIFORNIA CLASS;

12 (b) A Class Action is superior to any other available method for the fair and
13 efficient adjudication of the claims of the members of the CALIFORNIA
14 CLASS because in the context of employment litigation a substantial
15 number of individual CALIFORNIA CLASS Members will avoid
16 asserting their rights individually out of fear of retaliation or adverse
17 impact on their employment;

18 (c) The members of the CALIFORNIA CLASS are so numerous that it is
19 impractical to bring all members of the CALIFORNIA CLASS before the
20 Court;

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

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

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

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

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

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

14 29. DEFENDANT maintains records from which the Court can ascertain and identify
15 by job title each of DEFENDANT's employees who have been intentionally subjected to
16 DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend the
17 Complaint to include any additional job titles of similarly situated employees when they have
18 been identified.

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
22 causes of Action on behalf of a California sub-class, defined as all members of the
23 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
24 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
25 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
26 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
27 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
28

1 five million dollars (\$5,000,000.00).

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

14 32. DEFENDANT maintains records from which the Court can ascertain and identify
15 by name and job title, each of DEFENDANT’s employees who have been intentionally
16 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFF will seek leave to amend
17 the complaint to include any additional job titles of similarly situated employees when they have
18 been identified.

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

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

- 23 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
24 overtime compensation to members of the CALIFORNIA LABOR SUB-
25 CLASS in violation of the California Labor Code and California
26 regulations and the applicable California Wage Order;
27 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
28

entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;

(c) Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;

(d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;

(e) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

(f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;

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

(h) Whether DEFENDANT's conduct was willful.

35. DEFENDANT failed to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the applicable overtime rates for the overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to company procedures as alleged herein above. This business practice was applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay

1 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
2 CLASS the correct overtime pay for which DEFENDANT is liable
3 pursuant to Cal. Lab. Code § 1194 & § 1198;

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

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

12 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
14 itemized statement in writing showing all accurate and applicable
15 overtime rates in effect during the pay period and the corresponding
16 amount of time worked at each overtime rate by the employee; and,

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

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

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

1 will benefit the parties and the Court;

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

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

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

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA LABOR
4 SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the parties
8 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a practical
11 matter be dispositive of interests of the other members not party to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
15 or refused to act on grounds generally applicable to the CALIFORNIA
16 LABOR SUB-CLASS, making appropriate class-wide relief with respect
17 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
18 DEFENDANT failed to pay all wages due. Including the correct overtime
19 rate, for all overtime worked by the members of the CALIFORNIA
20 LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of the
22 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
23 violations of California Law as listed above, and predominate over any
24 question affecting only individual CALIFORNIA LABOR SUB-CLASS
25 Members, and a Class Action is superior to other available methods for
26 the fair and efficient adjudication of the controversy, including
27 consideration of:
- 28

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

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

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

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

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

15

16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

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

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

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

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

22 Complaint.

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

24 Code § 17021.

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

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

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

1 competition as follows:

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

6 Cal. Bus. & Prof. Code § 17203.

7 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
8 engage in a business practice which violates California law, including but not limited to, the
9 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
10 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, for which this
11 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
12 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
13 competition, including restitution of wages wrongfully withheld.

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

20 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
21 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
22 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
23 failed to accurately to record the applicable rate of all overtime worked, and failed to provide
24 the required amount of overtime compensation due to miscalculation of the overtime rate that
25 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 this
27 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
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1 including restitution of wages wrongfully withheld.

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

6 47. By the conduct alleged herein, DEFENDANT's practices were also unfair and
7 deceptive in that DEFENDANT failed to provide mandatory meal and/or rest breaks to
8 PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

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

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

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

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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
3 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
4 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
5 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
6 any workweek.

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

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

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

17 60. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
18 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
19 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
20 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
21 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
22 amount of overtime worked and correct applicable overtime rate for the amount of overtime
23 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
26 failed to pay these employees the correct applicable overtime wages for all overtime worked.

27 61. DEFENDANT's unlawful wage and hour practices manifested, without
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1 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
2 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including,
4 the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
5 workweek.

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

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

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

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

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

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

12 68. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
14 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
15 to not pay employees for their labor and DEFENDANT perpetrated this scheme by refusing to
16 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
17 applicable overtime rate.

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

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

11 12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

86. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
20 time to time required to work in excess of four (4) hours without being provided ten (10) minute
21 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
22 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
23 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
24 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
25 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
26 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
27 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
28

1 Members were periodically denied their proper rest periods by DEFENDANT and
2 DEFENDANT's managers.

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

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

12
13 **SIXTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

21 94. Cal. Labor Code § 226 provides that an employer must furnish employees with
22 an "accurate itemized" statement in writing showing:

23 (1) gross wages earned,

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

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

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

26 96. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
27 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
28

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

10
11 **SEVENTH CAUSE OF ACTION**

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

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

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

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

19 98. Cal. Lab. Code § 200 provides that:

20 As used in this article:

21 (a) "Wages" includes all amounts for labor performed by employees of every
22 description, whether the amount is fixed or ascertained by the standard of time,
23 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.

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

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

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

10 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
11 CLASS Members' employment contract.

12 102. Cal. Lab. Code § 203 provides:

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

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

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

27 **PRAYER FOR RELIEF**

28 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 Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

2 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
3 withheld from compensation due to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS; and,

5 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT's violations due to
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

9 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
10 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
11 pursuant to Cal. Code of Civ. Proc. § 382;

12 B) Compensatory damages, according to proof at trial, including compensatory
13 damages for overtime compensation due PLAINTIFF and the other members of
14 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
15 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

16 C) Meal and rest period compensation pursuant to California Labor Code Section
17 226.7 and the applicable IWC Wage Order;

18 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per each member of
20 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
22 an award of costs for violation of Cal. Lab. Code § 226;

23 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197; and,

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

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

7 Dated: March 11, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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9 By: _____

10 Norman B. Blumenthal

11 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: March 11, 2020
LLP

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff