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Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MARTINA AVERY, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

SLEEP DATA SERVICES LLC, a
California Limited Liability Company;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 37-2020-00032747-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO 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;
8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Sleep Data Services LLC (“DEFENDANT”) is a limited liability
7 corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business in the state of California.

9 2. DEFENDANT provides the following services: Home Sleep Testing, Diagnosis,
10 CPAP Therapy, Therapist Coaching, Continued Care & Supplies, and Dental Sleep Medicine
11 using Oral Appliance Therapy (OAT) and Combination Therapy.

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 September of 2016 to April
14 6, 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 and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

25 26 **THE CONDUCT**

27 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
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1 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock
7 without paying them for all the time they were under DEFENDANT's control. As a result of
8 their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
9 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
10 clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's
11 direction during what should have been their off-duty meal period. Additionally, from time to
12 time PLAINTIFF and other CALIFORNIA CLASS Members were required to respond to
13 DEFENDANT while off the clock via their cell phones for work related requests and
14 scheduling. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
15 minimum wages and overtime wage compensation by working without their time being
16 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
17 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
18 worked, is evidenced by DEFENDANT's business records.

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

23 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT, including but not limited to shift differential wages for working
27 undesirable shifts, cash in lieu of benefits, and other non-discretionary incentive bonus wages.

1 The non-discretionary incentive program provided all employees paid on an hourly basis with
2 incentive compensation when the employees met the various performance goals set by
3 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime to
4 PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to include the
5 incentive compensation as part of the employees' "regular rate of pay" for purposes of
6 calculating overtime pay. Management and supervisors described the incentive program to
7 potential and new employees as part of the compensation package. As a matter of law, the
8 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
9 must be included in the "regular rate of pay." The failure to do so has resulted in an
10 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
11 Members by DEFENDANT.

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

21 12. As a result of their rigorous work schedules, PLAINTIFF and other
22 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
23 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
24 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT,
25 from time to time, for more than five (5) hours during a shift without receiving an off-duty meal
26 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
27 Members with a second off-duty meal period from time to time in which these employees were
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1 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
2 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
3 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

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

20 16. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
21 her in the form of two components. One component of PLAINTIFF’s compensation was a base
22 hourly wage. The second component of PLAINTIFF’s compensation was non-discretionary
23 incentive wages as described above. DEFENDANT paid the incentive wages, so long as
24 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
25 DEFENDANT’s predefined eligibility performance requirements in various pay periods
26 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
27 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
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1 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
2 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF's
3 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's
4 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her
5 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
6 constituted wages within the meaning of the California Labor Code and thereby should have
7 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
8 unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal
9 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
10 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
11 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
12 she was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
13 forfeited meal and rest breaks without additional compensation and in accordance with
14 DEFENDANT's corporate policy and practice. DEFENDANT also provided PLAINTIFF with
15 a pay stub that failed to comply with all the requirements set forth in Cal. Lab. Code § 226(a).
16 To date, DEFENDANT has not fully paid PLAINTIFF the wages still owed to her or any
17 penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
18 PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 17. In March of 2020, and continuing throughout the rest of PLAINTIFF's
20 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
21 DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's
22 failure to properly maintain standard safety measures at PLAINTIFF's job site during the
23 Covid-19 pandemic.

24 18. Subsequent to PLAINTIFF's participation in protective activity by complaining
25 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
26 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
27 after PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment
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1 practices in March of 2020, DEFENDANT terminated PLAINTIFF's employment with
2 RESPONDENT in early April of 2020. As a result, there is a causal link between the protected
3 activity and DEFENDANT's decision to terminate her employment, which is against public
4 policy. Furthermore, specifically as to PLAINTIFF, DEFENDANT failed to properly maintain
5 standard safety measures at her job site. As such, PLAINTIFF was placed in a constant risk of
6 harm while performing her job duties for DEFENDANT during the Covid - 19 pandemic.
7 PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. As a direct
8 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against
9 PLAINTIFF by terminating her employment in April of 2020.

10 11 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

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

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

8 23. The California Legislature has commanded that “all wages... ..earned by any
9 person in any employment are due and payable twice during each calendar month, on days
10 designated in advance by the employer as the regular paydays”, and further that “[a]ny work
11 in excess of eight hours in one workday and any work in excess of 40 hours in any one
12 workweek . . . shall be compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare
14 Commission (IWC), however, is statutorily authorized to “establish exemptions from the
15 requirement that an overtime rate of compensation be paid... ..for executive, administrative,
16 and professional employees, provided [inter alia] that the employee is primarily engaged in
17 duties that meet the test of the exemption, [and] customarily and regularly exercises discretion
18 and independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the
19 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
20 LABOR SUB-CLASS qualify for exemption from the above requirements.

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

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

12 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all overtime worked at the applicable rate, as required by California Labor Code
15 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
16 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
17 as to include all earnings in the overtime compensation calculation as required by California
18 Labor Code §§ 510, *et seq.*

19 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
20 CLASS Members is impracticable.

21 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
22 law by:

- 23 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
24 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
25 place company policies, practices and procedures that failed to pay all
26 minimum and overtime wages due the CALIFORNIA CLASS for all time
27 worked, and failed to accurately record the applicable rates of all overtime
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1 worked by the CALIFORNIA CLASS;

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

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

12 (d) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
15 *seq.*, by failing to pay the correct federal overtime wages to the
16 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
17 required by the FLSA, and retaining the unpaid federal overtime to the
18 benefit of DEFENDANT.

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

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

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

27 (c) The claims of the representative PLAINTIFF are typical of the claims of
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1 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
2 other members of the CALIFORNIA CLASS, was subjected to the
3 employment practices of DEFENDANT and was a non-exempt employee
4 paid on an hourly basis and paid additional non-discretionary incentive
5 wages who was subjected to the DEFENDANT's practice and policy
6 which failed to pay the correct rate of overtime wages due to the
7 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
8 CLASS and thereby underpaid overtime compensation to the
9 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
10 result of DEFENDANT's employment practices. PLAINTIFF and the
11 members of the CALIFORNIA CLASS were and are similarly or
12 identically harmed by the same unlawful, deceptive, and unfair
13 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 counsel
16 who are competent and experienced in Class Action litigation. There are
17 no material conflicts between the claims of the representative PLAINTIFF
18 and the members of the CALIFORNIA CLASS that would make class
19 certification inappropriate. Counsel for the CALIFORNIA CLASS will
20 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
28

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

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

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

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

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

38. 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.

39. 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 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable

pursuant to Cal. Lab. Code § 1194 & § 1198;

- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee; and,
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment;

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

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

1 that are raised in this Complaint are common to the CALIFORNIA
2 LABOR SUB-CLASS and will apply to every member of the
3 CALIFORNIA LABOR SUB-CLASS;

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

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

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

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

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

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

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

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

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

26 1) The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of
28

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

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

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

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

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

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

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

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

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

1 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
2 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
3 CLASS as a whole;

- 4 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT. The
6 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
7 CLASS Members classified as non-exempt employees during the
8 CALIFORNIA LABOR SUB-CLASS PERIOD; 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 LABOR SUB-CLASS.

13
14 **FIRST CAUSE OF ACTION**

15 **For Unlawful Business Practices**

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

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

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

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

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

27 Any person who engages, has engaged, or proposes to engage in unfair
28 competition may be enjoined in any court of competent jurisdiction. The court

1 may make such orders or judgments, including the appointment of a receiver, as
2 may be necessary to prevent the use or employment by any person of any
3 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.

4 Cal. Bus. & Prof. Code § 17203.

5 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
6 engage in a business practice which violates California law, including but not limited to, the
7 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the Fair
9 Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, for which this Court should issue
10 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
11 necessary to prevent and remedy the conduct held to constitute unfair competition, including
12 restitution of wages wrongfully withheld.

13 47. 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 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
20 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
21 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
22 accurately to record the applicable rate of all overtime worked, and failed to provide the
23 required amount of overtime compensation due to a 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 49. 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 50. By the conduct alleged herein, DEFENDANT's practices were also unfair and
6 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

8 51. Therefore, PLAINTIFF demands on behalf of herself 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 52. PLAINTIFF further demands on behalf of herself 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 53. 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 54. 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 55. 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 56. 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 57. 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 Minimum Wages**

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

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

21 **and Against All Defendants)**

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

25 59. 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

1 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
2 Members.

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

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

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

10 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
12 time they work, including time spent engaging in work tasks while off the clock. To the extent
13 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT
14 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
15 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
16 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

1 of their property and legal rights, and otherwise causing them injury in order to increase
2 company profits at the expense of these employees.

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

14
15 **THIRD CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

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

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

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

23 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
27 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly

1 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
2 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
3 any workweek.

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

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

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

14 77. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
16 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
17 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
18 deny timely payment of wages due for the overtime worked by PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
20 these employees the correct applicable overtime wages for all overtime worked.

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

27 79. In committing these violations of the California Labor Code, DEFENDANT
28

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

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

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

17 82. 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.

21 83. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
24 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by
27 DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

15 89. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
16 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
17 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
18 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
19 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
20 duties for the legally required off-duty meal periods. As a result of their rigorous work,
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time
22 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
23 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
24 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
25 by DEFENDANT's business records from time to time. As a result, PLAINTIFF and other
26 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
27 additional compensation and in accordance with DEFENDANT's strict corporate policy and
28

1 practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
3 periods by DEFENDANT and DEFENDANT's managers.

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

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

13 14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 226]**

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

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

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

24 (1) gross wages earned,

25 (2) total hours worked by the employee, except for any employee whose compensation
26 is solely based on a salary and who is exempt from payment of overtime under
27 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
28

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.

98. 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. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross wages earned. Aside from the violations listed above, 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, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

99. 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

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

9
10 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

19 As used in this article:

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

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

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

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

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72

1 hours thereafter, unless the employee has given 72 hours previous notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages
3 at the time of quitting. Notwithstanding any other provision of law, an employee
4 who quits without providing a 72-hour notice shall be entitled to receive payment
by mail if he or she so requests and designates a mailing address. The date of the
mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of the notice of quitting.

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

7 105. Cal. Lab. Code § 203 provides:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
10 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.

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **Wrongful Termination In Violation of Public Policy**

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

23 108. PLAINTIFF realleges and incorporates by reference, as though fully set forth
24 herein, the prior paragraphs of this Complaint.

25 109. Subsequent to PLAINTIFF's participation in protective activity by complaining
26 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
27 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
28

1 after PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment
2 practices in March of 2020, DEFENDANT terminated PLAINTIFF's employment with
3 RESPONDENT in early April of 2020. As a result, there is a causal link between the protected
4 activity and DEFENDANT's decision to terminate her employment, which is against public
5 policy. Furthermore, specifically as to PLAINTIFF, DEFENDANT failed to properly maintain
6 standard safety measures at her job site. As such, PLAINTIFF was placed in a constant risk of
7 harm while performing her job duties for DEFENDANT during the Covid - 19 pandemic.
8 PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. As a direct
9 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against
10 PLAINTIFF by terminating her employment in April of 2020.

11 110. PLAINTIFF raised complaints of illegality while she worked for DEFENDANT
12 and was believed to be willing to raise complaints, and DEFENDANT retaliated against her by
13 taking adverse employment actions, including employment termination, against her.

14 111. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
15 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
16 and physical pain and anguish, all to her damage in a sum according to proof.

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

19 113. DEFENDANT'S misconduct was committed intentionally, in a malicious,
20 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
21 DEFENDANT.

22 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

117. On April 22, 2020, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

118. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record

1 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
2 to pay minimum wages, and (e) failed to pay wages when due, all in violation of the applicable
3 Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
4 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
5 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage
6 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
7 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
8 General Act of 2004 as the representative of the State of California for the illegal conduct
9 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

10 119. All of the conduct and violations alleged herein occurred during the
11 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
12 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
13 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
14 2018 AJDAR 12157 (Certified for Publication 12/19/18).

15 **PRAYER FOR RELIEF**

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

18 1. On behalf of the CALIFORNIA CLASS:

- 19 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
20 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
21 B) An order temporarily, preliminarily and permanently enjoining and restraining
22 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
23 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
24 withheld from compensation due to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS; and,

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

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

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

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

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

13 C) Meal and rest period compensation pursuant to California Labor Code Section
14 226.7 and the applicable IWC Wage Order;

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

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

23 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197.

25 3. On behalf of PLAINTIFF for the Eighth cause of action:

26 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

27 B) Special and General damages according to proof;

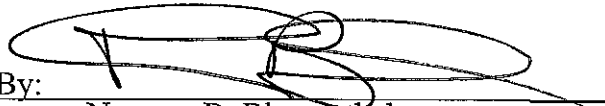
- 1 C) Statutory damages, penalties and attorney's fees;
- 2 D) For punitive damages in an amount necessary to make an example of and to
- 3 punish DEFENDANT and deter DEFENDANT from engaging in future similar
- 4 conduct;
- 5 E) For loss of earnings (both past and future); and,
- 6 F) For interest at the legal rate in an amount according to proof.
- 7 4. On behalf of the State of California and with respect to all AGGRIEVED
- 8 EMPLOYEES:
- 9 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 10 General Act of 2004.
- 11 5. On all claims:
- 12 A) An award of interest, including prejudgment interest at the legal rate;
- 13 B) Such other and further relief as the Court deems just and equitable; and,
- 14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 15 law, including, but not limited to, pursuant to Labor Code § 226 and/or § 1194.

16 Dated: September 17, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17

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19

20 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

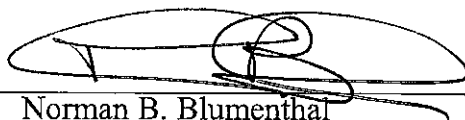
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DEMAND FOR A JURY TRIAL

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

Dated: September 17, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____



Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:

1004

April 22, 2020

CA2124

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Sleep Data Services LLC
Certified Mail #70192280000189179127
David D. French
6210 Belmont Trail Ct.
San Diego, CA 92130

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 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(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 Sleep Data Services LLC in California and classified as non-exempt employees during the time period of April 22, 2019 until a date as determined by the Court. Our offices represent Plaintiff Martina Avery (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Sleep Data Services LLC (“Defendant”). Plaintiff was employed by Defendant in California from September of 2016 to April 6, 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. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd.

5(B). Further, Defendant 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). Additionally, 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 her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. 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 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(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.

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

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

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

14 MARTINA AVERY, an individual, on behalf of
15 herself, and on behalf of all persons similarly
16 situated,

17 Plaintiff,

18 vs.

19 SLEEP DATA SERVICES LLC a California
20 Limited Liability Company; and Does 1 through 50,
21 Inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 6. FAILURE TO 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. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.
- DEMAND FOR A JURY TRIAL**

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

4
5 **THE PARTIES**

6 1. Defendant Sleep Data Services LLC (“DEFENDANT”) is a limited liability
7 corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business in the state of California.

9 2. DEFENDANT provides the following services: Home Sleep Testing, Diagnosis,
10 CPAP Therapy, Therapist Coaching, Continued Care & Supplies, and Dental Sleep Medicine
11 using Oral Appliance Therapy (OAT) and Combination Therapy.

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 September of 2016 to April
14 6, 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 and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately

1 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
7 clock without paying them for all the time they were under DEFENDANT's control. As a result
8 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
9 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
10 clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's
11 direction during what should have been their off-duty meal period. Additionally, from time to
12 time PLAINTIFF and other CALIFORNIA CLASS Members were required to respond to
13 DEFENDANT while off the clock via their cell phones for work related requests and
14 scheduling. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
15 minimum wages and overtime wage compensation by working without their time being
16 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
17 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
18 worked, is evidenced by DEFENDANT's business records.

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

23 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT, including but not limited to shift differential wages for working
27 undesirable shifts, cash in lieu of benefits, and other non-discretionary incentive bonus wages.

1 The non-discretionary incentive program provided all employees paid on an hourly basis with
2 incentive compensation when the employees met the various performance goals set by
3 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime to
4 PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to include the
5 incentive compensation as part of the employees' "regular rate of pay" for purposes of
6 calculating overtime pay. Management and supervisors described the incentive program to
7 potential and new employees as part of the compensation package. As a matter of law, the
8 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
9 must be included in the "regular rate of pay." The failure to do so has resulted in an
10 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS
11 Members by DEFENDANT.

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

22 12. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
24 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
25 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT,
26 from time to time, for more than five (5) hours during a shift without receiving an off-duty meal
27 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
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1 Members with a second off-duty meal period from time to time in which these employees were
2 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
3 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

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

21 16. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to
22 her in the form of two components. One component of PLAINTIFF’s compensation was a base
23 hourly wage. The second component of PLAINTIFF’s compensation was non-discretionary
24 incentive wages as described above. DEFENDANT paid the incentive wages, so long as
25 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
26 DEFENDANT’s predefined eligibility performance requirements in various pay periods
27 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
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1 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
2 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
3 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF's
4 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's
5 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her
6 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
7 constituted wages within the meaning of the California Labor Code and thereby should have
8 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
9 unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal
10 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
11 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
12 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which
13 she was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore
14 forfeited meal and rest breaks without additional compensation and in accordance with
15 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided
16 PLAINTIFF with a pay stub that failed to comply with all the requirements set forth in Cal. Lab.
17 Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the wages still owed to
18 her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy
19 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

20 17. In March of 2020, and continuing throughout the rest of PLAINTIFF's
21 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT
22 of DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's
23 failure to properly maintain standard safety measures at PLAINTIFF's job site during the
24 Covid-19 pandemic.

25 18. Subsequent to PLAINTIFF's participation in protective activity by complaining
26 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
27 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
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1 after PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment
2 practices in March of 2020, DEFENDANT terminated PLAINTIFF's employment with
3 RESPONDENT in early April of 2020. As a result, there is a causal link between the protected
4 activity and DEFENDANT's decision to terminate her employment, which is against public
5 policy. Furthermore, specifically as to PLAINTIFF, DEFENDANT failed to properly maintain
6 standard safety measures at her job site. As such, PLAINTIFF was placed in a constant risk of
7 harm while performing her job duties for DEFENDANT during the Covid - 19 pandemic.
8 PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. As a direct
9 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against
10 PLAINTIFF by terminating her employment in April of 2020.

11 12 **JURISDICTION AND VENUE**

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

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

23 **THE CALIFORNIA CLASS**

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

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

9 23. The California Legislature has commanded that “all wages... ..earned by any
10 person in any employment are due and payable twice during each calendar month, on days
11 designated in advance by the employer as the regular paydays”, and further that “[a]ny work
12 in excess of eight hours in one workday and any work in excess of 40 hours in any one
13 workweek . . . shall be compensated at the rate of no less than one and one-half times the
14 regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare
15 Commission (IWC), however, is statutorily authorized to “establish exemptions from the
16 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
17 professional employees, provided [inter alia] that the employee is primarily engaged in duties
18 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
19 independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the
20 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
21 LABOR SUB-CLASS qualify for exemption from the above requirements.

22 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate and record
26 minimum wage and overtime compensation for overtime worked by PLAINTIFF and the other
27 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
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1 work, required employees to perform this work and permitted or suffered to permit this work.

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

13 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
14 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
15 employee for all overtime worked at the applicable rate, as required by California Labor Code
16 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
17 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
18 as to include all earnings in the overtime compensation calculation as required by California
19 Labor Code §§ 510, *et seq.*

20 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
26 place company policies, practices and procedures that failed to pay all
27 minimum and overtime wages due the CALIFORNIA CLASS for all time
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1 worked, and failed to accurately record the applicable rates of all overtime
2 worked by the CALIFORNIA CLASS;

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

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

13 (d) Committing an act of unfair competition in violation of the California
14 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
15 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
16 *seq.*, by failing to pay the correct federal overtime wages to the
17 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
18 required by the FLSA, and retaining the unpaid federal overtime to the
19 benefit of DEFENDANT.

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

- 22 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of
24 their claims as a class will benefit the parties and the Court;
- 25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply uniformly to every member of the CALIFORNIA
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1 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
4 other members of the CALIFORNIA CLASS, was subjected to the
5 uniform employment practices of DEFENDANT and was a non-exempt
6 employee paid on an hourly basis and paid additional non-discretionary
7 incentive wages who was subjected to the DEFENDANT's practice and
8 policy which failed to pay the correct rate of overtime wages due to the
9 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
10 CLASS and thereby underpaid overtime compensation to the
11 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
12 result of DEFENDANT's employment practices. PLAINTIFF and the
13 members of the CALIFORNIA CLASS were and are similarly or
14 identically harmed by the same unlawful, deceptive, unfair and pervasive
15 pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
10 the business records of DEFENDANT; 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 CLASS.

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

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

22 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
23 Causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint
26 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
27 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
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1 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

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

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

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

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

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

- 1 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
2 entitled to overtime compensation for overtime worked under the overtime
3 pay requirements of California law;
- 4 (c) Whether DEFENDANT failed to accurately record the applicable
5 overtime rates for all overtime worked PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS;
- 7 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS with legally
9 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 10 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA LABOR SUB-CLASS with accurate
12 itemized wage statements;
- 13 (f) Whether DEFENDANT has engaged in unfair competition by the
14 above-listed conduct;
- 15 (g) The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS; and,
- 17 (h) Whether DEFENDANT's conduct was willful.

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

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

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS the correct overtime pay for which DEFENDANT is liable
4 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA CLASS with
11 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
12 and the legally required rest breaks;
- 13 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
14 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
15 itemized statement in writing showing all accurate and applicable
16 overtime rates in effect during the pay period and the corresponding
17 amount of time worked at each overtime rate by the employee; and,
- 18 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
19 when an employee is discharged or quits from employment, the employer
20 must pay the employee all wages due without abatement, by failing to
21 tender full payment and/or restitution of wages owed or in the manner
22 required by California law to the members of the CALIFORNIA LABOR
23 SUB-CLASS who have terminated their employment;

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

- 26 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
27 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
28

Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

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

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

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

41. In addition to meeting the statutory prerequisites to a Class Action, this action is

properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

1 consideration of:

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

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

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

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

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

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
10 CLASS Members classified as non-exempt employees during the
11 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

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

26 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
28

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

8 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
11 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the Fair
12 Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, for which this Court should issue
13 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
14 necessary to prevent and remedy the conduct held to constitute unfair competition, including
15 restitution of wages wrongfully withheld.

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

22 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
24 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
25 accurately to record the applicable rate of all overtime worked, and failed to provide the
26 required amount of overtime compensation due to a miscalculation of the overtime rate that
27 cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
28

1 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
2 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
3 including restitution of wages wrongfully withheld.

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

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

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

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

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

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

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

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

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

24 **and Against All Defendants)**

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

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

6 60. 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 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.

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

13 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
15 time they work, including time spent engaging in work tasks while off the clock. To the extent
16 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT
17 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
18 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
19 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS.

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

25 65. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately calculated the correct time worked and consequently underpaid the actual time
27 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.

1 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
2 benefits in violation of the California Labor Code, the Industrial Welfare Commission
3 requirements and other applicable laws and regulations.

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

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

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

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

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

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

14 ///

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17
18 **THIRD 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
19 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
20 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
21 deny timely payment of wages due for the overtime worked by PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
23 these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

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

1 to accurately record and pay using the applicable overtime rate as evidenced by
2 DEFENDANT's business records and witnessed by employees.

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

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

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

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

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

14 88. 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 89. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
18 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
21 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
22 duties for the legally required off-duty meal periods. As a result of their rigorous work,
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time
24 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
25 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
26 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
27 by DEFENDANT's business records from time to time. As a result, PLAINTIFF and other

1 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
2 additional compensation and in accordance with DEFENDANT's strict corporate policy and
3 practice.

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

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

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14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226]**

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

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

24 97. Cal. Labor Code § 226 provides that an employer must furnish employees with
25 an "accurate itemized" statement in writing showing:

26 (1) gross wages earned,

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

4 (3) the number of piecerate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security number or an
12 employee identification number other than a social security number may be shown on
13 the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

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

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

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

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

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

105. Cal. Lab. Code § 203 provides:

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

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

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

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EIGHTH CAUSE OF ACTION

Wrongful Termination In Violation of Public Policy

(By PLAINTIFF Against All Defendants)

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

109. Subsequent to PLAINTIFF's participation in protective activity by complaining to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment practices in March of 2020, DEFENDANT terminated PLAINTIFF's employment with RESPONDENT in early April of 2020. As a result, there is a causal link between the protected activity and DEFENDANT's decision to terminate her employment, which is against public policy. Furthermore, specifically as to PLAINTIFF, DEFENDANT failed to properly maintain standard safety measures at her job site. As such, PLAINTIFF was placed in a constant risk of harm while performing her job duties for DEFENDANT during the Covid - 19 pandemic. PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. As a direct consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF by terminating her employment in April of 2020.

110. PLAINTIFF raised complaints of illegality while she worked for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT retaliated against her by taking adverse employment actions, including employment termination, against her.

111. As a proximate result of DEFENDANT'S willful, knowing, and intentional, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

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

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
17 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
18 pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) Meal and rest period compensation pursuant to California Labor Code Section
25 226.7 and the applicable IWC Wage Order;
26 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
27 in which a violation occurs and one hundred dollars (\$100) per each member of
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the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

3. On behalf of PLAINTIFF for the Eighth cause of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

4. On all claims:

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

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

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

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

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

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

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff