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

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

14 SAMMY LANDIN, an individual, on behalf
15 of himself, and on behalf of all persons
16 similarly situated,

17 Plaintiff,

18 vs.

19 1ST LIGHT ENERGY INC., a Corporation;
20 and Does 1 through 50, Inclusive,

21 Defendants.

Case No. STK-CV-006-2020-9700

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. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant 1st Light Energy Inc. (“DEFENDANT”) is a corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT provides alternative energy solutions to its residential and
11 commercial customers through its installation of solar panels. DEFENDANT’s services
12 include financial advice, consultation, and solar panel installation. DEFENDANT was
13 founded in October of 2004.

14 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
15 Solar Installer Technician employee entitled to overtime pay and meal and rest periods from
16 September of 2017 to April of 2018 and again from January of 2019 to February 2020.
17 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
18 non-exempt employee paid in whole or in part on an hourly basis and received additional
19 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

12 6. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
17 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
18 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
19 50, inclusive, are responsible in some manner for one or more of the events and happenings
20 that proximately caused the injuries and damages hereinafter alleged.

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

2
3 **THE CONDUCT**

4 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and
5 continues to fail to accurately calculate and pay PLAINTIFF and the other members of the
6 CALIFORNIA CLASS for their overtime worked. DEFENDANT unlawfully and
7 unilaterally failed to accurately calculate wages for overtime worked by PLAINTIFF and
8 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
9 correct overtime compensation. As a result, PLAINTIFF and the other members of the
10 CALIFORNIA CLASS forfeited wages due them for working overtime without
11 compensation at the correct overtime rates. DEFENDANT's policy and practice to not pay
12 the members of the CALIFORNIA CLASS the correct overtime rate for all overtime worked
13 in accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

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

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

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

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

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

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

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

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

2 19. By way of background, the California Penal Code Section 25850 makes it
3 illegal to carry a loaded firearm on the person or in a vehicle while in any public place or on
4 any public street in an incorporated city or in any public place or on any public street in a
5 prohibited area of unincorporated territory. PLAINTIFF's employment ended in or around
6 early February of 2020, under the following circumstances. PLAINTIFF was aware of the
7 California Penal Code and other related laws regarding handguns, ammunition, access to
8 that ammunition and that the loaded handgun was subject to specific laws regarding the
9 carrying of such weapons and their ammunition. In addition to California Penal Code
10 Section 25850, PLAINTIFF also reasonably perceived DEFENDANT's company policy
11 prohibited firearms on company property.

12 20. Specifically, DEFENDANT's employment policies prohibit all of
13 DEFENDANT's employees, including contract workers and temporary employees, as well
14 as visitors and customers, from carrying firearms or weapons on company property.
15 DEFENDANT's employment policy regarding firearm and weapons further provides that a
16 license to carry the weapon on company property does not supersede company policy. Any
17 employee in violation of the aforementioned policy will be subject to disciplinary action, up
18 to and including termination. DEFENDANT's policy definition of "community property"
19 applies to all company-owned or leased vehicles and all vehicles that come onto company
20 property. In addition, DEFENDANT defines "dangerous weapons" to include firearms,
21 explosives, knives and other weapons that might be considered dangerous or that could
22 cause harm. PLAINTIFF was instructed by DEFENDANT to retrieve the company vehicle
23 formerly operated by Steven Manato ("Manato"). Manato was PLAINTIFF's direct
24 supervisor. Under the instruction of DEFENDANT, PLAINTIFF retrieved the company
25 vehicle and drove it to a gas station. After arriving to the gas station, PLAINTIFF searched
26 in the glove compartment of the company vehicle for a gas card. Upon opening the glove
27 compartment, PLAINTIFF and another of DEFENDANT's employees discovered a loaded
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1 pistol. In accordance with PLAINTIFF's reasonable inference of California Penal Code
2 Section 25850 and PLAINTIFF's awareness of company policy, PLAINTIFF immediately
3 reported his discovery of the weapon to the Human Resources department via email.
4 PLAINTIFF received no response from the department and chose to personally email Gina
5 Dickman ("Dickman"), an agent of DEFENDANT's Human Resources department, to
6 inquire about the status of the reported incident. Dickman followed up with PLAINTIFF in
7 an email communicating to PLAINTIFF that she was aware of the seriousness of the
8 Manato's actions and confirmed to PLAINTIFF that, "[t]his will never [sic] happen again."
9 Following this response from Dickman, PLAINTIFF communicated to Dickman how
10 Manato's violation of the firearm policy could have resulted in PLAINTIFF's arrest for
11 having a loaded firearm in the company vehicle.

12 21. A week following PLAINTIFF's report of the firearm in violation of company
13 policy, DEFENDANT notified PLAINTIFF that he would be discharged. Although
14 PLAINTIFF believed his actions appropriate and reasonable considering the circumstances,
15 DEFENDANT terminated PLAINTIFF. Although PLAINTIFF's supervisor, Manato,
16 violated DEFENDANT's company firearm policy, he remained employed with
17 DEFENDANT following PLAINTIFF's discharge. In violation of substantial and
18 fundamental policies, DEFENDANT wrongfully terminated PLAINTIFF. DEFENDANT's
19 motivating reason(s) for PLAINTIFF's termination was in retaliation for PLAINTIFF's
20 protected reporting activities and/or refusal or resistance to violate laws and/or for
21 exercising a statutory right or privilege, including with regard to his good faith perception
22 that DEFENDANT's employee and PLAINTIFF's supervisor, Manato, had violated the
23 California Penal Code Section 25850 and DEFENDANT's company firearm policy by
24 leaving a loaded handgun in DEFENDANT's company vehicle.

25 **JURISDICTION AND VENUE**

26 22. This Court has jurisdiction over this Action pursuant to California Code of
27 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
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1 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
2 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

8
9 **THE CALIFORNIA CLASS**

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

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

22 26. The California Legislature has commanded that "all wages... ..earned by any
23 person in any employment are due and payable twice during each calendar month, on days
24 designated in advance by the employer as the regular paydays", and further that "[a]ny
25 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
26 workweek . . . shall be compensated at the rate of no less than one and one-half times the
27 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial
28 Welfare Commission (IWC), however, is statutorily authorized to "establish exemptions

1 from the requirement that an overtime rate of compensation be paid... ...for executive,
2 administrative, and professional employees, provided [inter alia] that the employee is
3 primarily engaged in duties that meet the test of the exemption, [and] customarily and
4 regularly exercises discretion and independent judgment in performing those duties...”
5 (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA
6 CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the
7 above requirements.

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

15 28. DEFENDANT has the legal burden to establish that each and every
16 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
17 accurately calculate the “regular rate of pay” by including the incentive compensation that
18 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
19 DEFENDANT, however, as a matter of policy and procedure failed to have in place during
20 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
21 ensure that each and every CALIFORNIA CLASS Member is paid the applicable overtime
22 rate for all overtime worked, so as to satisfy their burden. This common business practice
23 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
24 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
25 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
26 claim.

27 29. At no time during the CALIFORNIA CLASS PERIOD was the compensation
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1 for any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
2 employee for all overtime worked at the applicable rate, as required by California Labor
3 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
4 the overtime compensation for any member of the CALIFORNIA CLASS properly
5 recalculated so as to include all earnings in the overtime compensation calculation as
6 required by California Labor Code §§ 510, *et seq.*

7 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
13 having in place company policies, practices and procedures that failed
14 to pay all minimum and overtime wages due the CALIFORNIA
15 CLASS for all time worked, and failed to accurately record the
16 applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 17 (b) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
19 unlawfully, unfairly, and/or deceptively having in place a company
20 policy, practice and procedure that failed to correctly calculate overtime
21 compensation due to PLAINTIFF and the members of the
22 CALIFORNIA CLASS;
- 23 (c) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
25 failing to provide mandatory meal and/or rest breaks to PLAINTIFF
26 and the CALIFORNIA CLASS members;
- 27 (d) Committing an act of unfair competition in violation of the California
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1 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
2 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
3 *seq.*, by failing to pay the correct federal overtime wages to the
4 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
5 required by the FLSA, and retaining the unpaid federal overtime to the
6 benefit of DEFENDANT;

- 7 (e) Committing an act of unfair competition in violation of the California
8 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
9 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
10 and the CALIFORNIA CLASS members with necessary expenses
11 incurred in the discharge of their job duties.

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

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

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
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dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic

1 losses sustained by the individual CALIFORNIA CLASS
2 Members when compared to the substantial expense and burden
3 of individual prosecution of this litigation;

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

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

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

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

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

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

- 3 (a) The questions of law and fact common to the CALIFORNIA CLASS
4 predominate over any question affecting only individual CALIFORNIA
5 CLASS Members because the DEFENDANT's employment practices
6 are applied with respect to the CALIFORNIA CLASS;
- 7 (b) A Class Action is superior to any other available method for the fair
8 and efficient adjudication of the claims of the members of the
9 CALIFORNIA CLASS because in the context of employment litigation
10 a substantial number of individual CALIFORNIA CLASS Members
11 will avoid asserting their rights individually out of fear of retaliation or
12 adverse impact on their employment;
- 13 (c) The members of the CALIFORNIA CLASS are so numerous that it is
14 impractical to bring all members of the CALIFORNIA CLASS before
15 the Court;
- 16 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
17 be able to obtain effective and economic legal redress unless the action
18 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
21 and other improprieties, and in obtaining adequate compensation for
22 the damages and injuries which DEFENDANT's actions have inflicted
23 upon the CALIFORNIA 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 CLASS for the injuries sustained;
- 27 (g) DEFENDANT has acted or refused to act on grounds generally
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1 applicable to the CALIFORNIA CLASS, thereby making final class-
2 wide relief appropriate with respect to the CALIFORNIA CLASS as a
3 whole;

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

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

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

15
16 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

41. 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.

42. 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

1 accurately pay PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3 4) A class action is superior to other available methods for the fair
4 and efficient adjudication of this litigation because class
5 treatment will obviate the need for unduly and unnecessary
6 duplicative litigation that is likely to result in the absence of
7 certification of this action pursuant to Cal. Code of Civ. Proc. §
8 382.

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

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

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

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

12 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
15 CLASS Members classified as non-exempt employees during the
16 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

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

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

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

4 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

8 Any person who engages, has engaged, or proposes to engage in unfair
9 competition may be enjoined in any court of competent jurisdiction. The court
10 may make such orders or judgments, including the appointment of a receiver, as
11 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.

12 Cal. Bus. & Prof. Code § 17203.

13 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
16 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code
17 Regs., tit. 8, § 11040. Subdivision 5(B), and the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
18 §§ 201, *et seq.*, for which this Court should issue declaratory and other equitable relief pursuant
19 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
20 to constitute unfair competition, including restitution of wages wrongfully withheld.

21 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
22 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
23 unscrupulous or substantially injurious to employees, and were without valid justification or
24 utility for which this Court should issue equitable and injunctive relief pursuant to Section
25 17203 of the California Business & Professions Code, including restitution of wages wrongfully
26 withheld.

27 51. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
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1 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
2 members of the CALIFORNIA CLASS, wages due for overtime worked, reporting time wages
3 due, business expenses incurred, failed to accurately to record the applicable rate of all overtime
4 worked, and failed to provide the required amount of overtime compensation due to a
5 miscalculation of the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab.
6 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
7 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
8 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

9 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
10 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
11 other members of the CALIFORNIA CLASS to be underpaid during their employment with
12 DEFENDANT.

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

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

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

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

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

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

13 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
14 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
15 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
16 engaging in any unlawful and unfair business practices in the future.

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

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

9 69. 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 the correct minimum wage compensation for their time worked for DEFENDANT.

12 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
13 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
14 Members to work without paying them for all the time they were under DEFENDANT's
15 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
17 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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1 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
2 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
3 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
4 deny timely payment of wages due for the overtime worked by PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
6 these employees the correct applicable overtime wages for all overtime worked.

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

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

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

22 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
23 from the overtime requirements of the law. None of these exemptions are applicable to
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
26 to a valid collective bargaining agreement that would preclude the causes of action contained
27 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the
28

1 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
2 non-waiveable rights provided by the State of California.

3 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
5 they were entitled to, constituting a failure to pay all earned wages. During the CALIFORNIA
6 LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
7 Members were required, permitted or suffered by DEFENDANT to work for DEFENDANT
8 and were not paid for all the time they worked, including overtime work.

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

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

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

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

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

21
22 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

2
3 **SIXTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

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

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

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

13 (1) gross wages earned,

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

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

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

22 (5) net wages earned,

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

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

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

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

4 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
5 other members of the CALIFORNIA SUB-CLASS with complete and accurate wage
6 statements which failed to show, among other things, the correct gross and net wages earned,
7 and/or the correct total of hours worked, and/or the number of piece rate units earned and any
8 applicable piece rate when the employee was paid on a piece rate basis. Cal. Lab. Code § 226
9 provides that every employer shall furnish each of his or her employees with an accurate
10 itemized wage statement in writing showing, among other things, gross wages earned and all
11 applicable hourly rates in effect during the pay period and the corresponding amount of time
12 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
13 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
14 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
15 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 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.

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

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

18 If an employee not having a written contract for a definite period quits his or her
19 employment, his or her wages shall become due and payable not later than 72
20 hours thereafter, unless the employee has given 72 hours previous notice of his
21 or her intention to quit, in which case the employee is entitled to his or her wages
22 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.

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

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

26 If an employer willfully fails to pay, without abatement or reduction, in
27 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

1 penalty from the due date thereof at the same rate until paid or until an action
2 therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

12 **EIGHTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 2802]**

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

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

20 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

24 113. In the course of their employment, PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees fo
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost

1 associated with the use of their personal cellular phones for DEFENDANT's benefit.
2 Specifically, PLAINTIFF and other CALIFORNIA SUB-CLASS Members were required
3 by DEFENDANT to use their personal cellular phones for work related issues. As a result,
4 in the course of their employment with DEFENDANT, PLAINTIFF and other members of
5 the CALIFORNIA SUB-CLASS incurred unreimbursed business expenses which included,
6 but were not limited to, costs related to the use of their personal cellular phones all on behalf
7 of and for the benefit of DEFENDANT.

8 114. PLAINTIFF therefore demands reimbursement for expenditures or losses
9 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
10 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
11 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

12 **NINTH CAUSE OF ACTION**

13 **Wrongful Termination**

14 **[Wrongful Termination in Violation of Public Policy]**

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

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

18 116. PLAINTIFF was employed by DEFENDANT.

19 117. DEFENDANT wrongfully terminated PLAINTIFF on approximately February
20 2020.

21 118. The public policies of the State of California is to prohibit employers from: (1)
22 implementing policies preventing employees from disclosing reasonably based suspicions of
23 violation os State or Federal statutes or regulations; (2) retaliating against employees who
24 have disclosed reasonably based suspicions of potential violations of state or federal statutes
25 or regulations; and (3) retaliating against employees who refuse to participate in activities
26 and/or resist activities that might result in violations of State or Federal statutes or
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1 regulations.

2 119. PLAINTIFF reasonably perceived in good faith that the above-described
3 activities would have been potential violations of or non-compliance with specified federal
4 and/or state statutes or regulations, including but not limited to: (1) the California Penal
5 Code Section 28850.

6 120. DEFENDANT wrongfully terminated PLAINTIFF in violation of substantial
7 and fundamental policies in that the substantial motivating reason(s) for PLAINTIFF's
8 termination was in retaliation for PLAINTIFF's protected reporting activities and/or refusal
9 or resistance to violate laws and/or for exercising a statutory right or privilege, including
10 with regard to his good faith perception that DEFENDANT's employee and PLAINTIFF's
11 supervisor, Manato, had violated the California Penal Code Section 25850 and
12 DEFENDANT's company firearm policy by leaving a loaded handgun in DEFENDANT's
13 company vehicle.

14 121. As a proximate result of PLAINTIFF's wrongful termination, PLAINTIFF
15 sustained economic damages for past and future loss of earnings and benefits, according to
16 proof.

17 122. As a proximate result of PLAINTIFF's wrongful termination and unlawful
18 conditions in the workplace, PLAINTIFF sustained general damages for mental and
19 emotional stress, according to proof.

20 123. DEFENDANT acted with malice, oppression, and fraudulently toward
21 PLAINTIFF and PLAINTIFF is thus entitled to punitive damages, according to proof.

22 **TENTH 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)**

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

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

11 126. PLAINTIFF, and such persons that may be added from time to time who
12 satisfy the requirements and exhaust the administrative procedures under the Private
13 Attorney General Act, brings this Representative Action on behalf of the State of California
14 with respect to himself and all individuals who worked for DEFENDANT in California and
15 classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time
16 period of April 15, 2019 until a date as determined by the Court (the "PAGA PERIOD").

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

25 128. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
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properly record and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed to pay minimum wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections listed in 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), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹

PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:
 - A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

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

1 withheld from compensation due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS; and,

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

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

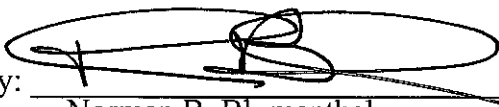
- 7 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
8 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
9 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 10 B) Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum and overtime compensation due PLAINTIFF and the
12 other members of the CALIFORNIA LABOR SUB-CLASS, during the
13 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
14 thereon at the statutory rate;
- 15 C) Meal and rest period compensation pursuant to California Labor Code Section
16 226.7 and the applicable IWC Wage Order;
- 17 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
18 period in which a violation occurs and one hundred dollars (\$100) per each
19 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
20 subsequent pay period, not exceeding an aggregate penalty of four thousand
21 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- 22 E) The wages of all terminated employees from the CALIFORNIA LABOR
23 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
24 or until an action therefore is commenced, in accordance with Cal. Lab. Code
25 § 203;
- 26 F) The amount of the expenses PLAINTIFF and each member of the
27 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
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- 1 plus interest, and costs of suit; and,
- 2 G) For liquidated damages pursuant to California Labor Code Sections 1194.2
- 3 and 1197.
- 4 3. On behalf of PLAINTIFF for the Ninth cause of action:
- 5 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
- 6 B) Special and General damages according to proof;
- 7 C) Statutory damages, penalties and attorney's fees;
- 8 D) For punitive damages in an amount necessary to make an example of and to
- 9 punish DEFENDANT and deter DEFENDANT from engaging in future
- 10 similar conduct;
- 11 E) For loss of earnings (both past and future); and,
- 12 F) For interest at the legal rate in an amount according to proof.
- 13 4. On behalf of the State of California and with respect to all AGGRIEVED
- 14 EMPLOYEES:
- 15 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 16 General Act of 2004.
- 17 5. On all claims:
- 18 A) An award of interest, including prejudgment interest at the legal rate;
- 19 B) Such other and further relief as the Court deems just and equitable; and,
- 20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 21 law, including, but not limited to, pursuant to Labor Code § 226, § 1194
- 22 and/or § 2802.

23 Dated: November 19, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW

24 LLP

25

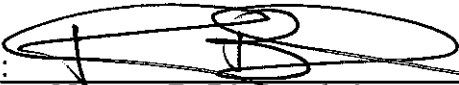
26 By: 

27 Norman B. Blumenthal
28 Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

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

Dated: November 19, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

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1004

April 15, 2020
CA2106

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

1st Light Energy Inc.
Certified Mail # 70191120000066524592
GKL Corporate/Search, Inc.
One Capitol Mall, Ste 660
Sacramento, CA 95814

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 1st Light Energy Inc. in California and classified as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiff Sammy Landin (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant 1st Light Energy Inc. (“Defendant”). Plaintiff was employed by Defendant in California from September of 2017 to April of 2018 and from January of 2019 to February of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. 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, Defendants failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). 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 him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 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.

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SAMMY LANDIN, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

1ST LIGHT ENERGY INC., a Corporation; and
Does 1 through 50, Inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY 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. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

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

5
6 **THE PARTIES**

7 1. Defendant 1st Light Energy Inc. (“DEFENDANT”) is a corporation and at all
8 relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT provides alternative energy solutions to its residential and
11 commercial customers through its installation of solar panels. DEFENDANT’s services
12 include financial advice, consultation, and solar panel installation. DEFENDANT was
13 founded in October of 2004.

14 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
15 Solar Installer Technician employee entitled to overtime pay and meal and rest periods from
16 September of 2017 to April of 2018 and again from January of 2019 to February 2020.
17 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
18 non-exempt employee paid in whole or in part on an hourly basis and received additional
19 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

12 6. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
17 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
18 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
19 50, inclusive, are responsible in some manner for one or more of the events and happenings
20 that proximately caused the injuries and damages hereinafter alleged.

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

2
3 **THE CONDUCT**

4 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and
5 continues to fail to accurately calculate and pay PLAINTIFF and the other members of the
6 CALIFORNIA CLASS for their overtime worked. DEFENDANT unlawfully and
7 unilaterally failed to accurately calculate wages for overtime worked by PLAINTIFF and
8 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
9 correct overtime compensation. As a result, PLAINTIFF and the other members of the
10 CALIFORNIA CLASS forfeited wages due them for working overtime without
11 compensation at the correct overtime rates. DEFENDANT's uniform policy and practice to
12 not pay the members of the CALIFORNIA CLASS the correct overtime rate for all overtime
13 worked in accordance with applicable law is evidenced by DEFENDANT's business
14 records.

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

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

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

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

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

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

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

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

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

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

4 19. By way of background, the California Penal Code Section 25850 makes it
5 illegal to carry a loaded firearm on the person or in a vehicle while in any public place or on
6 any public street in an incorporated city or in any public place or on any public street in a
7 prohibited area of unincorporated territory. PLAINTIFF's employment ended in or around
8 early February of 2020, under the following circumstances. PLAINTIFF was aware of the
9 California Penal Code and other related laws regarding handguns, ammunition, access to
10 that ammunition and that the loaded handgun was subject to specific laws regarding the
11 carrying of such weapons and their ammunition. In addition to California Penal Code
12 Section 25850, PLAINTIFF also reasonably perceived DEFENDANT's company policy
13 prohibited firearms on company property.

14 20. Specifically, DEFENDANT's employment policies prohibit all of
15 DEFENDANT's employees, including contract workers and temporary employees, as well
16 as visitors and customers, from carrying firearms or weapons on company property.
17 DEFENDANT's employment policy regarding firearm and weapons further provides that a
18 license to carry the weapon on company property does not supersede company policy. Any
19 employee in violation of the aforementioned policy will be subject to disciplinary action, up
20 to and including termination. DEFENDANT's policy definition of "community property"
21 applies to all company-owned or leased vehicles and all vehicles that come onto company
22 property. In addition, DEFENDANT defines "dangerous weapons" to include firearms,
23 explosives, knives and other weapons that might be considered dangerous or that could
24 cause harm. PLAINTIFF was instructed by DEFENDANT to retrieve the company vehicle
25 formerly operated by Steven Manato ("Manato"). Manato was PLAINTIFF's direct
26 supervisor. Under the instruction of DEFENDANT, PLAINTIFF retrieved the company
27 vehicle and drove it to a gas station. After arriving to the gas station, PLAINTIFF searched
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1 in the glove compartment of the company vehicle for a gas card. Upon opening the glove
2 compartment, PLAINTIFF and another of DEFENDANT's employees discovered a loaded
3 pistol. In accordance with PLAINTIFF's reasonable inference of California Penal Code
4 Section 25850 and PLAINTIFF's awareness of company policy, PLAINTIFF immediately
5 reported his discovery of the weapon to the Human Resources department via email.
6 PLAINTIFF received no response from the department and chose to personally email Gina
7 Dickman ("Dickman"), an agent of DEFENDANT's Human Resources department, to
8 inquire about the status of the reported incident. Dickman followed up with PLAINTIFF in
9 an email communicating to PLAINTIFF that she was aware of the seriousness of the
10 Manato's actions and confirmed to PLAINTIFF that, "[t]his will never [sic] happen again."
11 Following this response from Dickman, PLAINTIFF communicated to Dickman how
12 Manato's violation of the firearm policy could have resulted in PLAINTIFF's arrest for
13 having a loaded firearm in the company vehicle.

14 21. A week following PLAINTIFF's report of the firearm in violation of company
15 policy, DEFENDANT notified PLAINTIFF that he would be discharged. Although
16 PLAINTIFF believed his actions appropriate and reasonable considering the circumstances,
17 DEFENDANT terminated PLAINTIFF. Although PLAINTIFF's supervisor, Manato,
18 violated DEFENDANT's company firearm policy, he remained employed with
19 DEFENDANT following PLAINTIFF's discharge. In violation of substantial and
20 fundamental policies, DEFENDANT wrongfully terminated PLAINTIFF. DEFENDANT's
21 motivating reason(s) for PLAINTIFF's termination was in retaliation for PLAINTIFF's
22 protected reporting activities and/or refusal or resistance to violate laws and/or for
23 exercising a statutory right or privilege, including with regard to his good faith perception
24 that DEFENDANT's employee and PLAINTIFF's supervisor, Manato, had violated the
25 California Penal Code Section 25850 and DEFENDANT's company firearm policy by
26 leaving a loaded handgun in DEFENDANT's company vehicle.

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1 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
2 workweek . . . shall be compensated at the rate of no less than one and one-half times the
3 regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial
4 Welfare Commission (IWC), however, is statutorily authorized to “establish exemptions
5 from the requirement that an overtime rate of compensation be paid... ...for executive,
6 administrative, and professional employees, provided [inter alia] that the employee is
7 primarily engaged in duties that meet the test of the exemption, [and] customarily and
8 regularly exercises discretion and independent judgment in performing those duties...”
9 (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the CALIFORNIA
10 CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the
11 above requirements.

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

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

5 29. At no time during the CALIFORNIA CLASS PERIOD was the compensation
6 for any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
7 employee for all overtime worked at the applicable rate, as required by California Labor
8 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
9 the overtime compensation for any member of the CALIFORNIA CLASS properly
10 recalculated so as to include all earnings in the overtime compensation calculation as
11 required by California Labor Code §§ 510, *et seq.*

12 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
13 CLASS Members is impracticable.

14 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
15 under California law by:

- 16 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
17 Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
18 having in place company policies, practices and procedures that failed
19 to pay all minimum and overtime wages due the CALIFORNIA
20 CLASS for all time worked, and failed to accurately record the
21 applicable rates of all overtime worked by the CALIFORNIA CLASS;
22 (b) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
24 unlawfully, unfairly, and/or deceptively having in place a company
25 policy, practice and procedure that failed to correctly calculate overtime
26 compensation due to PLAINTIFF and the members of the
27 CALIFORNIA CLASS;
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- 1 (c) Committing an act of unfair competition in violation of the California
2 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
3 failing to provide mandatory meal and/or rest breaks to PLAINTIFF
4 and the CALIFORNIA CLASS members;
- 5 (d) Committing an act of unfair competition in violation of the California
6 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
7 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
8 *seq.*, by failing to pay the correct federal overtime wages to the
9 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
10 required by the FLSA, and retaining the unpaid federal overtime to the
11 benefit of DEFENDANT;
- 12 (e) 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 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
15 and the CALIFORNIA CLASS members with necessary expenses
16 incurred in the discharge of their job duties.

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

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

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

21 33. 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
25 of separate actions by individual members of the CALIFORNIA
26 CLASS will create the risk of:

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

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

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

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

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

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
5 be avoided to recover the relatively small amount of economic
6 losses sustained by the individual CALIFORNIA CLASS
7 Members when compared to the substantial expense and burden
8 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 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
18 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 CLASS Members will avoid asserting
22 their legal rights out of fear of retaliation by DEFENDANT,
23 which may adversely affect an individual's job with
24 DEFENDANT or with a subsequent employer, the Class Action
25 is the only means to assert their claims through a representative;
26 and,
- 27 4) A class action is superior to other available methods for the fair
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1 and efficient adjudication of this litigation because class
2 treatment will obviate the need for unduly and unnecessary
3 duplicative litigation that is likely to result in the absence of
4 certification of this action pursuant to Cal. Code of Civ. Proc. §
5 382.

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

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

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

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

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

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THE CALIFORNIA LABOR SUB-CLASS

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

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

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

1 been identified.

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

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

- 6 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
7 overtime compensation to members of the CALIFORNIA LABOR
8 SUB-CLASS in violation of the California Labor Code and California
9 regulations and the applicable California Wage Order;
- 10 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
11 entitled to overtime compensation for overtime worked under the
12 overtime pay requirements of California law;
- 13 (c) Whether DEFENDANT failed to accurately record the applicable
14 overtime rates for all overtime worked PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS;
- 16 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS with legally
18 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 19 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS with accurate
21 itemized wage statements;
- 22 (f) Whether DEFENDANT has engaged in unfair competition by the
23 above-listed conduct;
- 24 (g) The proper measure of damages and penalties owed to the members of
25 the CALIFORNIA LABOR SUB-CLASS; and,
- 26 (h) Whether DEFENDANT's conduct was willful.

27 41. DEFENDANT, as a matter of company policy, practice and procedure, failed
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1 to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
2 Members and failed to provide accurate records of the applicable overtime rates for the
3 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS
4 Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly
5 basis by DEFENDANT according to uniform and systematic company procedures as alleged
6 herein above. This business practice was uniformly applied to each and every member of
7 the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can
8 be adjudicated on a class-wide basis.

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

- 11 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
13 CLASS the correct overtime pay for which DEFENDANT is liable
14 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 15 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
16 accurately pay PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS the correct minimum wage pay for which
18 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 19 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
20 PLAINTIFF and the other members of the CALIFORNIA CLASS with
21 all legally required off-duty, uninterrupted thirty (30) minute meal
22 breaks and the legally required rest breaks;
- 23 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
24 the members of the CALIFORNIA LABOR SUB-CLASS with an
25 accurate itemized statement in writing showing all accurate and
26 applicable overtime rates in effect during the pay period and the
27 corresponding amount of time worked at each overtime rate by the
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employee;

- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

43. 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 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

1 rate of overtime wages due to the CALIFORNIA LABOR SUB-
2 CLASS for all overtime worked. PLAINTIFF sustained economic
3 injury as a result of DEFENDANT's employment practices.
4 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
5 CLASS were and are similarly or identically harmed by the same
6 unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and,

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

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

- 19 (a) Without class certification and determination of declaratory, injunctive,
20 statutory and other legal questions within the class format, prosecution
21 of separate actions by individual members of the CALIFORNIA
22 LABOR SUB-CLASS will create the risk of:
- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the
26 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 27 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 consideration of:

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

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

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

- 27 (a) The questions of law and fact common to the CALIFORNIA LABOR
28

1 SUB-CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

3 (b) A Class Action is superior to any other available method for the fair
4 and efficient adjudication of the claims of the members of the
5 CALIFORNIA LABOR SUB-CLASS because in the context of
6 employment litigation a substantial number of individual
7 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
8 their rights individually out of fear of retaliation or adverse impact on
9 their employment;

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

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

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

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members classified as non-exempt employees during the
5 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to
7 bring a efficient and rapid conclusion to all litigation of all wage and
8 hour related claims arising out of the conduct of DEFENDANT as to
9 the members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

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

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

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

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

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

1 Cal. Bus. & Prof. Code § 17203.

2 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
3 engage in a business practice which violates California law, including but not limited to, the
4 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
5 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code
6 Regs., tit. 8, § 11040. Subdivision 5(B), and the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
7 §§ 201, *et seq.*, for which this Court should issue declaratory and other equitable relief pursuant
8 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
9 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

26 52. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,
27 unfair and deceptive in that DEFENDANT’s employment practices caused PLAINTIFF and the
28

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 53. By the conduct alleged herein, DEFENDANT's practices were also unfair and
4 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

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

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

14
15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

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

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

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

23 62. 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 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
27 Members.

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

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

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

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

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

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

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

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

3 71. 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 72. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
11 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
13 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
14 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
15 correct minimum wages for their time worked.

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

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

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

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

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

14 75. 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 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
20 accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other
21 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
22 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
23 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
24 any workweek.

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

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

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

8 80. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
9 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
10 amount of overtime worked and correct applicable overtime rate for the amount of overtime
11 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to
12 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
14 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
15 all overtime worked.

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

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

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

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

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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5 **FIFTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

(1) gross wages earned,

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

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

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

(5) net wages earned,

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

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

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

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

8 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
9 other members of the CALIFORNIA SUB-CLASS with complete and accurate wage
10 statements which failed to show, among other things, the correct gross and net wages earned,
11 and/or the correct total of hours worked, and/or the number of piece rate units earned and any
12 applicable piece rate when the employee was paid on a piece rate basis. Cal. Lab. Code § 226
13 provides that every employer shall furnish each of his or her employees with an accurate
14 itemized wage statement in writing showing, among other things, gross wages earned and all
15 applicable hourly rates in effect during the pay period and the corresponding amount of time
16 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
19 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
20 statements which violated Cal. Lab. Code § 226.

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

5
6 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

15 As used in this article:

16 (a) "Wages" includes all amounts for labor performed by employees of every
17 description, whether the amount is fixed or ascertained by the standard of time,
18 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.

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

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

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72
25 hours thereafter, unless the employee has given 72 hours previous notice of his
26 or her intention to quit, in which case the employee is entitled to his or her wages
27 at the time of quitting. Notwithstanding any other provision of law, an employee
28 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.

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

3 108. Cal. Lab. Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in
5 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
6 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.

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

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

16 **EIGHTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

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

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

24 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

25 An employer shall indemnify his or her employee for all necessary expenditures
26 or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties, or of his or her obedience to the directions of the employer, even
though unlawful, unless the employee, at the time of obeying the directions,

1 believed them to be unlawful.

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

13 114. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
14 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
15 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
16 at the statutory rate and costs under Cal. Lab. Code § 2802.

17
18 **NINTH CAUSE OF ACTION**

19 **Wrongful Termination**

20 **[Wrongful Termination in Violation of Public Policy]**

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

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

24 116. PLAINTIFF was employed by DEFENDANT.

25 117. DEFENDANT wrongfully terminated PLAINTIFF on approximately February
26 2020.

27 118. The public policies of the State of California is to prohibit employers from: (1)
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1 implementing policies preventing employees from disclosing reasonably based suspicions of
2 violation os State or Federal statutes or regulations; (2) retaliating against employees who have
3 disclosed reasonably based suspicions of potential violations of state or federal statutes or
4 regulations; and (3) retaliating against employees who refuse to participate in activities and/or
5 resist activities that might result in violations of State or Federal statutes or regulations.

6 119. PLAINTIFF reasonably perceived in good faith that the above-described activities
7 would have been potential violations of or non-compliance with specified federal and/or state
8 statutes or regulations, including but not limited to: (1) the California Penal Code Section
9 28850.

10 120. DEFENDANT wrongfully terminated PLAINTIFF in violation of substantial and
11 fundamental policies in that the substantial motivating reason(s) for PLAINTIFF's termination
12 was in retaliation for PLAINTIFF's protected reporting activities and/or refusal or resistance
13 to violate laws and/or for exercising a statutory right or privilege, including with regard to his
14 good faith perception that DEFENDANT's employee and PLAINTIFF's supervisor, Manato,
15 had violated the California Penal Code Section 25850 and DEFENDANT's company firearm
16 policy by leaving a loaded handgun in DEFENDANT's company vehicle.

17 121. As a proximate result of PLAINTIFF's wrongful termination, PLAINTIFF
18 sustained economic damages for past and future loss of earnings and benefits, according to
19 proof.

20 122. As a proximate result of PLAINTIFF's wrongful termination and unlawful
21 conditions in the workplace, PLAINTIFF sustained general damages for mental and emotional
22 stress, according to proof.

23 123. DEFENDANT acted with malice, oppression, and fraudulently toward
24 PLAINTIFF and PLAINTIFF is thus entitled to punitive damages, according to proof.

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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
13 fund for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

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;

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

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

3. On behalf of PLAINTIFF for the Ninth and Tenth causes 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, § 1194 and/or § 2802.

1 Dated: April 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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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 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff