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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ,
an individual, on behalf of herself and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

MEDAMERICA, INC. a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00034393-CU-OE-CTL

**FIRST AMENDED CLASS ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL.
BUS. & PROF. CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 &
1197.1;

3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;

4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB. CODE §§
226.7 & 512 AND THE APPLICABLE IWC WAGE
ORDER;

5. FAILURE TO PROVIDE REQUIRED REST PERIODS
IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512
AND THE APPLICABLE IWC WAGE ORDER;

6. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802;

7. FAILURE TO PROVIDE ACCURATE ITEMIZED
STATEMENTS IN VIOLATION OF CAL. LAB. CODE §
226; and,

8. FAILURE TO PROVIDE WAGES WHEN DUE IN
VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND
203;

9. FAILURE TO PROVIDE PERSONNEL FILES IN
VIOLATION OF CAL. LAB. CODE § 1198.5.

10. CIVIL PENALTIES FOR VIOLATIONS OF THE
LABOR CODE PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT, CAL. LAB. CODE §§
2699 *ET SEQ.*

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Medamerica, Inc. (“DEFENDANT”) is a Limited Liability Company that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
8 of California.

9 2. DEFENDANT provides a wide range of integrated acute care expertise.

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

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined
15 as all individuals who are or previously were employed by DEFENDANT in California and classified
16 as non-exempt employees (the “CLASS”) at any time during the period beginning April 15, 2019
17 through to October 15, 2021 (the “CLASS PERIOD”). The amount in controversy for the aggregate
18 claim of CLASS Members is under five million dollars (\$5,000,000.00).

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

28 6. The true names and capacities, whether individual, corporate, subsidiary, partnership,

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

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

15 16 **THE CONDUCT**

17 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
18 required to pay PLAINTIFF and CLASS Members for all their time worked, meaning the time during
19 which an employee is subject to the control of an employer, including all the time the employee is
20 suffered or permitted to work. DEFENDANT required PLAINTIFF and CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically,
22 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty
23 meal break. PLAINTIFF was from time to time interrupted by work assignments while what should
24 have been PLAINTIFF's off-duty meal break. Indeed there were days where PLAINTIFF did not even
25 receive a partial lunch. Furthermore, PLAINTIFF was from time to time contacted after-hours on her
26 personal cell phone and was expected to reply to all issues related to her employment. As a result,
27 PLAINTIFF and other CLASS Members forfeited minimum wage and overtime compensation by
28 working without their time being accurately recorded and without compensation at the applicable

1 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
2 PLAINTIFF and other CLASS Members for all time worked is evidenced by DEFENDANT's business
3 records.

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

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

24 11. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other CLASS
26 Members for required business expenses incurred by the PLAINTIFF and other CLASS Members in
27 direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
28 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the

1 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
3 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
5 them to be unlawful."

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

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

24 14. In violation of the applicable sections of the California Labor Code and the requirements
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
26 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
27 PLAINTIFF and the other members of the CLASS for missed meal and rest periods and all wages due
28 to them. This uniform policy and practice of DEFENDANT was intended to purposefully avoid the

1 payment for all time worked as required by California law which allows DEFENDANT to illegally
2 profit and gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the CLASS against DEFENDANT, the CLASS PERIOD
4 should be adjusted accordingly.

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

15 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
16 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and
17 failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or
18 practice which provides timely off-duty meal and rest breaks to PLAINTIFF and also failed to
19 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by
20 the PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-
21 duty meal periods. As a result, DEFENDANT’s failure to provide PLAINTIFF with the legally required
22 meal periods is evidenced by DEFENDANT’s business records. To date, DEFENDANT has yet to pay
23 PLAINTIFF all of her wages due to her and DEFENDANT has failed to pay any penalties owed to her
24 under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does
25 not exceed the sum or value of \$75,000.

26
27 **JURISDICTION AND VENUE**

28 17. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action
2 is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
3 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

9
10 **THE CLASS**

11 19. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
13 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a CLASS, defined as all individuals who are
14 or previously were employed by DEFENDANT in California and classified as non-exempt employees
15 (the "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 "CLASS PERIOD"). The amount
17 in controversy for the aggregate claim of CLASS Members is under five million dollars
18 (\$5,000,000.00).

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

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

27 22. DEFENDANT has the legal burden to establish that each and every CLASS Member
28 was paid accurately for all meal and rest breaks missed as required by California laws. The

1 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in
2 place during the CLASS PERIOD and still fails to have in place a policy or practice to ensure that each
3 and every CLASS Member is paid as required by law. This common business practice is applicable
4 to each and every CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or
5 deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation,
6 damages, and reliance are not elements of this claim.

7 23. The CLASS, is so numerous that joinder of all CLASS Members is impracticable.

8 24. DEFENDANT uniformly violated the rights of the CLASS under California law by:

- 9 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
11 in place company policies, practices and procedures that uniformly and
12 systematically failed to record and pay PLAINTIFF and the other members of
13 the CLASS for all time worked, including minimum wages owed and overtime
14 wages owed for work performed by these employees;
- 15 (b) Committing an act of unfair competition in violation of the UCL, by failing to
16 provide the PLAINTIFF and the other members of the CLASS with the legally
17 required meal and rest periods; and,
- 18 (c) Committing an act of unfair competition in violation of the California Unfair
19 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
20 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CLASS members
21 with necessary expenses incurred in the discharge of their job duties.
- 22 (d) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
23 PLAINTIFF and the members of the CLASS all wages due for overtime worked,
24 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 25 (e) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
26 accurately pay PLAINTIFF and the members of the CLASS the correct
27 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab.
28 Code §§ 1194 and 1197;

- 1 (f) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CLASS with an accurate itemized statement in writing showing
3 the corresponding correct amount of wages earned by the employee;
- 4 (g) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
5 and the other members of the CLASS with all legally required off-duty,
6 uninterrupted thirty (30) minute meal breaks and the legally required off-duty
7 rest breaks;
- 8 (h) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
9 CLASS members with necessary expenses incurred in the discharge of their job
10 duties; and,
- 11 (i) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
12 employee is discharged or quits from employment, the employer must pay the
13 employee all wages due without abatement, by failing to tender full payment
14 and/or restitution of wages owed or in the manner required by California law to
15 the members of the CLASS who have terminated their employment.

16
17 25. This Class Action meets the statutory prerequisites for the maintenance of a Class
18 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 19 (a) The persons who comprise the CLASS are so numerous that the joinder of all
20 such persons is impracticable and the disposition of their claims as a class will
21 benefit the parties and the Court;
- 22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
23 are raised in this Complaint are common to the CLASS will apply uniformly to
24 every member of the CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CLASS. PLAINTIFF, like all the other members of the CLASS,
27 was classified as non-exempt employees paid on an hourly basis who was
28 subjected to the DEFENDANT's deceptive practice and policy described herein.

1 PLAINTIFF sustained economic injury as a result of DEFENDANT's
2 employment practices. PLAINTIFF and the members of the CLASS were and
3 are similarly or identically harmed by the same unlawful, deceptive, unfair and
4 pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

- 27 1) With respect to the First Cause of Action, the final relief on behalf of the
28 CLASS sought does not relate exclusively to restitution because through

1 this claim PLAINTIFF seeks declaratory relief holding that the
2 DEFENDANT's policy and practices constitute unfair competition,
3 along with declaratory relief, injunctive relief, and incidental equitable
4 relief as may be necessary to prevent and remedy the conduct declared
5 to constitute unfair competition;

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

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

individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

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

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

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

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

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

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

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

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

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

4 31. The CLASS is so numerous that joinder of all CLASS Members is impracticable.

5 32. Common questions of law and fact exist as to members of the CLASS, including, but
6 not limited, to the following:

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

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

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

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

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

25 34. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
26 17021.

27 35. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as
3 follows:

4 Any person who engages, has engaged, or proposes to engage in unfair competition may
5 be enjoined in any court of competent jurisdiction. The court may make such orders or
6 judgments, including the appointment of a receiver, as may be necessary to prevent the
7 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.

8 Cal. Bus. & Prof. Code § 17203.

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

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

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

17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

45. PLAINTIFF and the other members of the CLASS are entitled to, and do, seek such

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

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

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

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

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

19 **(By PLAINTIFF and the CLASS**

20 **and Against All Defendants)**

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

23
24 49. PLAINTIFF and the other members of the CLASS bring a claim for DEFENDANT's
25 willful and intentional violations of the California Labor Code and the Industrial Welfare Commission
26 requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to
27 PLAINTIFF and CLASS Members.
28

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

3 51. 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 the
5 minimum so fixed is unlawful.

6 52. 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 53. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other
9 members of the CLASS without regard to the correct amount of time they work. As set forth herein,
10 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment
11 of wages due to PLAINTIFF and the other members of the CLASS.

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

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

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

24 57. During the CLASS PERIOD, PLAINTIFF and the other members of the CLASS were
25 paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

26 58. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CLASS for the true time they worked, PLAINTIFF and
28

1 the other members of the CLASS have suffered and will continue to suffer an economic injury in
2 amounts which are presently unknown to them and which will be ascertained according to proof at trial.

3 59. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CLASS were under compensated for their time worked. DEFENDANT systematically
5 elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their
6 labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated
7 this systematic scheme by refusing to pay PLAINTIFF and the other members of the CLASS the correct
8 minimum wages for their time worked.

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

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

25
26 **THIRD CAUSE OF ACTION**

27 **For Failure To Pay Overtime Compensation**

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

2 **(By PLAINTIFF and the CLASS and Against All Defendants)**

3 62. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
4 reference, as though full set forth herein, the prior paragraphs of this Complaint.

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

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

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

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

20 67. During the CLASS PERIOD, PLAINTIFF and CLASS Members were required by
21 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including
22 overtime work.

23 68. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CLASS as a whole, as a result of implementing a uniform policy
25 and practice that failed to accurately record overtime worked by PLAINTIFF and other CLASS
26 Members and denied accurate compensation to PLAINTIFF and the other members of the CLASS for
27 overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday,
28

1 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

7 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
8 PLAINTIFF and the other members of the CLASS did not receive full compensation for overtime
9 worked.

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

17 72. During the CLASS PERIOD, PLAINTIFF and the other members of the CLASS have
18 been paid less for overtime worked that they are entitled to, constituting a failure to pay all earned
19 wages.

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

26 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CLASS for the true amount of time they worked,
28

1 PLAINTIFF and the other members of the CLASS have suffered and will continue to suffer an
2 economic injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

4 75. DEFENDANT knew or should have known that PLAINTIFF and the other members of
5 the CLASS were under compensated for all overtime worked. DEFENDANT systematically elected,
6 either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a
7 matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this
8 systematic scheme by refusing to pay PLAINTIFF and the other members of the CLASS for overtime
9 worked.

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

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

26
27 **FOURTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

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

1 [Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

18 85. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
19 Members have been damaged in an amount according to proof at trial, and seek all wages earned and
20 due, interest, penalties, expenses and costs of suit.

21
22 **SIXTH CAUSE OF ACTION**

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

24 **[Cal. Lab. Code § 2802]**

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

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

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

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

88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the CLASS members for expenses which include, but are not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's uniform policy, practice and procedure is to not reimburse PLAINTIFF and the CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses are necessary to complete their principal job duties. These expenses are necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

89. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by PLAINTIFF and the CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CLASS and Against All Defendants)

90. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this

1 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose compensation is solely
6 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
7 515 or any applicable order of the Industrial Welfare Commission,

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

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

12 (5) net wages earned,

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

14 (7) the name of the employee and his or her social security number, except that by January 1,
15 2008, only the last four digits of his or her social security number or an employee identification
16 number other than a social security number may be shown on the itemized statement,

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

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

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

1 DEFENDANT from time to time provided PLAINTIFF and the other members of the CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

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19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

26 As used in this article:

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

1 piece, Commission basis, or other method of calculation.

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

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

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

7 If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her intention
9 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
10 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
11 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.

12 98. There was no definite term in PLAINTIFF's or any CLASS Members' employment
13 contract.

14 99. Cal. Lab. Code § 203 provides:

15 If an employer willfully fails to pay, without abatement or reduction, in accordance with
16 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
who quits, the wages of the employee shall continue as a penalty from the due date
17 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.

18 100. The employment of PLAINTIFF and many CLASS Members has terminated and
19 DEFENDANT has not tendered payment of wages, to these employees who missed meal and rest
20 breaks, as required by law.

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

26 **NINTH CAUSE OF ACTION**

27 For Failure to Provide Personnel Files

1 [Cal. Lab. Code § 1198.5]

2 (By Plaintiff and Against Defendant]

3 102. PLAINTIFF incorporates by reference the allegations set forth in the previous
4 paragraph of this Complaint as though fully set forth at this point.

5 103. On February 11, 2020, PLAINTIFF's counsel of record, as PLAINTIFF's legal
6 representative caused written requests via certified mail to be delivered to DEFENDANT for
7 PLAINTIFF's personnel and employment records, including but not limited to (1) payroll records,
8 (2) employment contracts; (3) itemized pay stubs, and (4) Plaintiff Salazar's complete employment
9 file.

10 104. Defendant failed to provide and/or make available to PLAINTIFF her personnel
11 records, payroll records, employment contracts, and entire employment file within thirty (30) of all
12 her requests stated above. In fact, as of the filing of this First Amended Complaint, Defendant still
13 has not provided the PLAINTIFF her personnel records, pay stubs, and employment file and
14 DEFENDANT has failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

15 105. DEFENDANT has repeatedly violated Cal. Lab. Code Section 1198.5 by failing to
16 timely respond and provide PLAINTIFF with her employment file. Section 1198.5 states that
17 employees (and former employees) have the right to inspect personnel records maintained by the
18 employer "related to the employee's performance or to any grievance concerning the employee."
19 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
20 requested her employment file via certified mail and DEFENDANT failed to respond timely. As a
21 result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal.
22 Lab. Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and costs for
23 bringing this action.

24
25 **TENTH CAUSE OF ACTION**

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

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

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

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

13 108. PLAINTIFF, and such persons that may be added from time to time who
14 satisfy the requirements and exhaust the administrative procedures under the Private
15 Attorney General Act, brings this Representative Action on behalf of the State of California
16 with respect to herself and all individuals who are or previously were employed by
17 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
18 EMPLOYEES") April 15, 2019 through October 15, 2021 (the "PAGA PERIOD").

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

27 110. The policies, acts and practices heretofore described were and are an unlawful
28

1 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
2 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
3 properly record and provide legally required meal and rest periods, (c) failed to pay
4 minimum wages, (d) failed to pay overtime wages, (e) failed to pay wages when due, and (f)
5 failed to reimburse employees for required expenses, all in violation of the applicable Labor
6 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
7 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
8 Title 8, Section 11040, Subdivision 5(A)-(B) and the applicable Wage Order(s), and thereby
9 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery
10 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of
11 2004 as the representative of the State of California for the illegal conduct perpetrated on
12 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

13 1111. All of the conduct and violations alleged herein occurred during the PAGA
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
15 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
16 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
17 2018 AJDAR 12157 (Certified for Publication 12/19/18).

18
19
20 **PRAYER FOR RELIEF**

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

23 1. On behalf of the CLASS:

24 A) That the Court certify the First Cause of Action asserted by the CLASS as a class action
25 pursuant to Cal. Code of Civ. Proc. § 382;

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

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

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

- 2 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
3 from compensation due to PLAINTIFF and the other members of the CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
5 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
6 to the other members of the CLASS.

7 2. On behalf of the CLASS:

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CLASS as a class action pursuant to Cal. Code of Civ.
10 Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory damages
12 for minimum and overtime compensation due PLAINTIFF and the other members of
13 the CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory
14 rate;
15 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
16 a violation occurs and one hundred dollars (\$100) per each member of the CLASS for
17 each violation in a subsequent pay period, not exceeding an aggregate penalty of four
18 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
19 D) The wages of all terminated employees from the CLASS as a penalty from the due date
20 thereof at the same rate until paid or until an action therefore is commenced, in
21 accordance with Cal. Lab. Code § 203;
22 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
23 applicable IWC Wage Order;
24 F) The amount of the expenses PLAINTIFF and each member of the CLASS incurred in
25 the course of their job duties, plus interest, and costs of suit; and,
26 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

27 3. On behalf of the State of California and with respect to all AGGRIEVED
28

1 EMPLOYEES:

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

4 4. On all claims:

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

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

7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
8 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

9
10 Dated: August 16, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

11
12
13 By: /s/ Norman B. Blumenthal

14 Norman B. Blumenthal
15 Attorneys for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

Dated: August 16, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for PLAINTIFF

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

April 15, 2020
CA2085

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Medamerica, Inc.
Certified Mail # 70161370000022512102
Registered Agent Solutions, Inc.
1220 S. Street, Suite 150
Sacramento, CA 95811

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 Medamerica, 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 Kathryne Martinez-Lopez (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Medamerica, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from March of 2019 to March 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 her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ, an
individual, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MEDAMERICA, 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Kathryn Martinez-Lopez (“PLAINTIFF”) and individual, on behalf of herself
2 and all other similarly situated current and former employees, alleges on information and belief,
3 except for her own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. Defendant Medamerica, Inc. (“DEFENDANT”) is a Limited Liability Company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT provides a wide range of integrated acute care expertise.

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

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

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

1 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
2 economically injured by DEFENDANT's past and current unlawful conduct, and all other
3 appropriate legal and equitable relief.

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

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

21 22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they were
28 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work

1 during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from
2 time to time interrupted by work assignments while what should have been PLAINTIFF's off-
3 duty meal break. Indeed there were days where PLAINTIFF did not even receive a partial
4 lunch. Furthermore, PLAINTIFF was from time to time contacted after-hours on her personal
5 cell phone and was expected to reply to all issues related to her employment. As a result,
6 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
7 compensation by working without their time being accurately recorded and without
8 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
9 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
10 time worked is evidenced by DEFENDANT's business records.

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

23 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
27 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
28 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,

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

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

17 12. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
18 Members as a business expense, were required by DEFENDANT to use their own personal
19 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. As a
22 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
23 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
24 were not limited to, costs related to the use of their personal cellular phones and travel with their
25 personal vehicles, on behalf of and for the benefit of DEFENDANT.

26 13. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other members of the CALIFORNIA CLASS with complete and accurate wage statements
28 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.

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

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

19 15. By reason of this uniform conduct applicable to PLAINTIFF and all
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
22 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
23 calculate and record all missed meal and rest periods and all wages due to PLAINTIFF and
24 other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal
25 and rest breakwages and all other wages due to them is the DEFENDANT's burden. As a result
26 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
27 failed to properly calculate and/or pay all required compensation for work performed by the
28 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations

1 promulgated thereunder as herein alleged.

2 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
3 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
4 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
5 did not have a policy or practice which provides timely off-duty meal and rest breaks to
6 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
7 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved
8 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
9 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
10 DEFENDANT's business records. To date, DEFENDANT has yet to pay PLAINTIFF all of
11 her wages due to her and DEFENDANT has failed to pay any penalties owed to her under
12 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
13 does not exceed the sum or value of \$75,000.

14 **JURISDICTION AND VENUE**

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

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

26 **THE CALIFORNIA CLASS**

27
28 19. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive

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

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

12 21. DEFENDANT, as a matter of company policy, practice and procedure, and in
13 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and
15 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
16 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
17 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
18 permits or suffers to permit this work.

19 22. DEFENDANT has the legal burden to establish that each and every
20 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
21 required by California laws. The DEFENDANT, however, as a matter of uniform and
22 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
23 PERIOD and still fails to have in place a policy or practice to ensure that each and every
24 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
25 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
26 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
27 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

28 23. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 24. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
3 California law by:

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

11 (b) Committing an act of unfair competition in violation of the UCL, by
12 failing to provide the PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with the legally required meal and rest periods;
14 and,

15 (c) Committing an act of unfair competition in violation of the California
16 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
17 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA CLASS members with necessary expenses incurred in
19 the discharge of their job duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sustained by the individual CALIFORNIA CLASS Members when
2 compared to the substantial expense and burden of individual
3 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 parties
13 to the adjudication or substantially impair or impede their
14 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, which
18 may adversely affect an individual's job with DEFENDANT or
19 with a subsequent employer, the Class Action is the only means to
20 assert their claims through a representative; and,

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

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

28 (a) The questions of law and fact common to the CALIFORNIA CLASS

1 predominate over any question affecting only individual CALIFORNIA
2 CLASS Members because the DEFENDANT's employment practices are
3 uniform and systematically applied with respect to the CALIFORNIA
4 CLASS;

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

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

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

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

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

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

28 (h) The members of the CALIFORNIA CLASS are readily ascertainable from

1 the business records of DEFENDANT; and,

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

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

11
12 **THE CALIFORNIA LABOR SUB-CLASS**

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

21 30. DEFENDANT, as a matter of company policy, practice and procedure, and in
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
23 requirements, and the applicable provisions of California law, intentionally, knowingly, and
24 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
25 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
26 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
27 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
28

1 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
2 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
3 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
4 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
5 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

11 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
12 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

28 34. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
3 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
4 CLASS all wages due for overtime worked, for which DEFENDANT is
5 liable pursuant to Cal. Lab. Code § 1194;
- 6 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
7 accurately pay PLAINTIFF and the members of the CALIFORNIA
8 LABOR SUB-CLASS the correct minimum wage pay for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 10 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
12 itemized statement in writing showing the corresponding correct amount
13 of wages earned by the employee;
- 14 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
15 PLAINTIFF and the other members of the CALIFORNIA CLASS with
16 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
17 and the legally required off-duty rest breaks;
- 18 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
19 the CALIFORNIA CLASS members with necessary expenses incurred in
20 the discharge of their job duties; and,
- 21 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
22 when an employee is discharged or quits from employment, the employer
23 must pay the employee all wages due without abatement, by failing to
24 tender full payment and/or restitution of wages owed or in the manner
25 required by California law to the members of the CALIFORNIA LABOR
26 SUB-CLASS who have terminated their employment.

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

- 1 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
2 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
3 Members is impracticable and the disposition of their claims as a class
4 will benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
6 that are raised in this Complaint are common to the CALIFORNIA
7 LABOR SUB-CLASS and will apply uniformly to every member of the
8 CALIFORNIA LABOR SUB-CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
11 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
12 was a non-exempt employee paid on an hourly basis who was subjected
13 to the DEFENDANT's practice and policy described herein. PLAINTIFF
14 sustained economic injury as a result of DEFENDANT's employment
15 practices. PLAINTIFF and the members of the CALIFORNIA LABOR
16 SUB-CLASS were and are similarly or identically harmed by the same
17 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
18 in by DEFENDANT; and,
- 19 (d) The representative PLAINTIFF will fairly and adequately represent and
20 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
21 retained counsel who are competent and experienced in Class Action
22 litigation. There are no material conflicts between the claims of the
23 representative PLAINTIFF and the members of the CALIFORNIA
24 LABOR SUB-CLASS that would make class certification inappropriate.
25 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
26 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

1 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
2 CLASS as a whole;

- 3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
6 CLASS Members who worked for DEFENDANT in California at any
7 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
8 (i) Class treatment provides manageable judicial treatment calculated to bring
9 a efficient and rapid conclusion to all litigation of all wage and hour
10 related claims arising out of the conduct of DEFENDANT as to the
11 members of the CALIFORNIA LABOR SUB-CLASS.

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

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

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

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

1 necessary to restore to any person in interest any money or property, real or
2 personal, which may have been acquired by means of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

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

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

17 43. By the conduct alleged herein, DEFENDANT's practices were deceptive and
18 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
19 mandated meal and rest periods, the required amount of compensation for missed meal and rest
20 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
21 expenses incurred, due to a systematic business practice 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 44. 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 other members of the CALIFORNIA CLASS to be underpaid during their employment with

1 DEFENDANT.

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

6 46. Therefore, PLAINTIFF demands on behalf of herself 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 47. PLAINTIFF further demands on behalf of herself and each member of the
12 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
13 duty paid rest period was not timely provided as required by law.

14 48. 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 time worked, and
17 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 49. 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 50. 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
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and

1 unfair business practices, including earned but unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

28 63. By virtue of DEFENDANT's unlawful failure to accurately pay all earned

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for the true time they worked, PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
4 injury in amounts which are presently unknown to them and which will be ascertained
5 according to proof at trial.

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

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

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

1 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
2 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
3 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

1 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
3 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

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

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

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

4 78. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

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

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

24 81. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of
2 depriving them of their property and legal rights, and otherwise causing them injury in order
3 to increase company profits at the expense of these employees.

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

15
16 **FOURTH CAUSE OF ACTION**

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

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

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

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

24 84. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
3 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
5 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
6 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
7 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
8 in some workdays in which these employees were required by DEFENDANT to work ten (10)
9 hours of work from time to time. As a result, PLAINTIFF and other members of the
10 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

21
22 **FIFTH CAUSE OF ACTION**

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

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

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

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

1 of this Complaint.

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

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

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

22
23 **SIXTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

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

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

3 92. Cal. Lab. Code § 2802 provides, in relevant part, that:

4 An employer shall indemnify his or her employee for all necessary expenditures
5 or losses incurred by the employee in direct consequence of the discharge of his
6 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.

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

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

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

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

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1 **EIGHTH 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 99. 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.

9 100. 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,
task, piece, Commission basis, or other method of calculation.

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

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

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

19 If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72
21 hours thereafter, unless the employee has given 72 hours previous notice of his
or her intention to quit, in which case the employee is entitled to his or her wages
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
23 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.

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

26 104. Cal. Lab. Code § 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 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.

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

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

12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

- 16 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
17 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
18 B) An order temporarily, preliminarily and permanently enjoining and restraining
19 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
20 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
21 withheld from compensation due to PLAINTIFF and the other members of the
22 CALIFORNIA CLASS; and,
23 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
24 for restitution of the sums incidental to DEFENDANT's violations due to
25 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 27 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
28 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class

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

2 B) Compensatory damages, according to proof at trial, including compensatory
3 damages for minimum and overtime compensation due PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
5 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
6 statutory rate;

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

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

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

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

20 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
21 1197.

22 3. On all claims:

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

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

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
27 §2802.
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Dated: April 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

Dated: April 15, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFF