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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

10 JEFFREY GREGORY, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 VERIO HEALTHCARE, INC., a
16 California Corporation; and DOES 1
17 through 50, inclusive,

18 Defendants.

Case No.

20STCV37254

CLASS ACTION COMPLAINT FOR:

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

By Fax

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a supplier of quality manufactured disposable medical supplies.
10 Besides being a Durable Medical Equipment provider DEFENDANT also offers a large
11 selection of medical supplies and disposables for homecare patients.

12 3. PLAINTIFF was employed by DEFENDANT in California from August of 2018
13 to January 24, 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 24 **THE CONDUCT**

25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. DEFENDANT required these employees to work off the clock
3 without paying them for all the time they were under DEFENDANT's control. Specifically,
4 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to
5 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
6 assignments. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
7 time worked by working without their time being accurately recorded and without compensation
8 at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not
9 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
10 by DEFENDANT's business records. DEFENDANT knew or should have known that
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were working
12 off the clock and were under compensated for their time worked.

13 9. State law provides that employees must be paid overtime at one-and-one-half
14 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
16 employee's performance, including but not limited to, on-call flat sum wages.

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

1 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
2 DEFENDANT.

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

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

1 requirement under California law that employers authorize and permit all employees to take rest
2 period means that employers must relieve employees of all duties and relinquish control over
3 how employees spend their time which includes control over the locations where employees
4 may take their rest period. Employers cannot impose controls that prohibit an employee from
5 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts
6 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks.

7 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
8 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
9 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
11 all time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required these employees to work off the clock without paying them for all the
14 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
15 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
16 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
17 Members forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable minimum wage and overtime wage rates. To the extent
19 that the time worked off the clock did not qualify for overtime premium payment,
20 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
21 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

22 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
23 other members of the CALIFORNIA CLASS with complete and accurate wage statements
24 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
25 Code § 226 provides that every employer shall furnish each of his or her employees with an
26 accurate itemized wage statement in writing showing, among other things, gross wages earned
27 and all applicable hourly rates in effect during the pay period and the corresponding amount of
28 time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing

1 to identify the correct rates of pay and number of hours worked, including for the “on call fee,”
2 item of pay, which is a non-discretionary incentive wage payment. Aside, from the violations
3 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
4 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
5 DEFENDANT from time to time provided PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

26 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
28 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT

1 did not have a policy or practice which provided timely off-duty meal and rest breaks to
2 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
3 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
4 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
5 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
6 DEFENDANT's business records. As a result of DEFENDANT not accurately recording
7 minimum and overtime wages due and/or the hours and rates for the on call fee item of pay, the
8 wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in
9 particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all
10 of his wages due to him and DEFENDANT has failed to pay any penalties owed to him under
11 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
12 does not exceed the sum or value of \$75,000.

13 14 **JURISDICTION AND VENUE**

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

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

25 26 **THE CALIFORNIA CLASS**

27 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

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

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

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

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

26 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

28 25. DEFENDANT violated the rights of the CALIFORNIA CLASS under California

1 law by:

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

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

- 14 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
15 that the joinder of all such persons is impracticable and the disposition of
16 their claims as a class will benefit the parties and the Court;
17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 CLASS will apply to every member of the CALIFORNIA CLASS;
20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA CLASS, was classified as a non-
23 exempt employee paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy which failed to provide the
25 legally required meal and rest periods to the CALIFORNIA CLASS and
26 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
27 CLASS. PLAINTIFF sustained economic injury as a result of
28 DEFENDANT's employment practices. PLAINTIFF and the members of

1 the CALIFORNIA CLASS were and are similarly or identically harmed
2 by the same unlawful, deceptive and unfair misconduct engaged in by
3 DEFENDANT; and,

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

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

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

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

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
28 act on grounds generally applicable to the CALIFORNIA CLASS, making

1 appropriate class-wide relief with respect to the CALIFORNIA CLASS
2 as a whole in that DEFENDANT failed to pay all wages due to members
3 of the CALIFORNIA CLASS as required by law;

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

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

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

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

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA CLASS would as a practical matter be
5 dispositive of the interests of the other members not parties
6 to the adjudication or substantially impair or impede their
7 ability to protect their interests;

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

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

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

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

25 (b) A Class Action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the CALIFORNIA
27 CLASS because in the context of employment litigation a substantial
28 number of individual CALIFORNIA CLASS Members will avoid

1 asserting their rights individually out of fear of retaliation or adverse
2 impact on their employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before the
5 Court;

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

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

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

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

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

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

26 29. DEFENDANT maintains records from which the Court can ascertain and identify
27 by job title each of DEFENDANT's employees who have been intentionally subjected to
28 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will

1 seek leave to amend the Complaint to include any additional job titles of similarly situated
2 employees when they have been identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

25 32. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT's employees who have been intentionally
27 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
28 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of

1 similarly situated employees when they have been identified.

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

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

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

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

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

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

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

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

1 to the DEFENDANT's practice and policy which failed to pay the correct
2 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
3 PLAINTIFF sustained economic injury as a result of DEFENDANT's
4 employment practices. PLAINTIFF and the members of the
5 CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive and unfair
7 misconduct engaged in by DEFENDANT; and,

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

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

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

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the parties
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28 matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to
2 protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
4 or refused to act on grounds generally applicable to the CALIFORNIA
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect
6 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
7 DEFENDANT fails to pay all wages due. Including the correct wages for
8 all time worked by the members of the CALIFORNIA LABOR SUB-
9 CLASS as required by law;

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

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

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

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA LABOR SUB-
28 CLASS, which would establish incompatible standards of

1 conduct for the DEFENDANT; and/or,

2 B. Adjudications with respect to individual members of the
3 CALIFORNIA LABOR SUB-CLASS would as a practical
4 matter be dispositive of the interests of the other members
5 not parties to the adjudication or substantially impair or
6 impede their ability to protect their interests;

7 3) In the context of wage litigation because a substantial number of
8 individual CALIFORNIA LABOR SUB-CLASS Members will
9 avoid asserting their legal rights out of fear of retaliation by
10 DEFENDANT, which may adversely affect an individual's job
11 with DEFENDANT or with a subsequent employer, the Class
12 Action is the only means to assert their claims through a
13 representative; and,

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

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

21 (a) The questions of law and fact common to the CALIFORNIA LABOR
22 SUB-CLASS predominate over any question affecting only individual
23 CALIFORNIA LABOR SUB-CLASS Members;

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 LABOR SUB-CLASS because in the context of employment litigation a
27 substantial number of individual CALIFORNIA LABOR SUB-CLASS
28 Members will avoid asserting their rights individually out of fear of

1 retaliation or adverse impact on their employment;

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

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

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

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

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

20 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANT. The
22 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
23 CLASS Members who worked for DEFENDANT in California at any
24 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

10 41. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

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

18 Cal. Bus. & Prof. Code § 17203.

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

26 43. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
27 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
28 unscrupulous or substantially injurious to employees, and were without valid justification or

1 utility for which this Court should issue equitable and injunctive relief pursuant to Section
2 17203 of the California Business & Professions Code, including restitution of wages wrongfully
3 withheld.

4 44. By the conduct alleged herein, DEFENDANT's practices were deceptive and
5 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
6 meal and rest periods, the required amount of compensation for missed meal and rest periods
7 and overtime and minimum wages owed, and failed to timely pay wages, due to a business
8 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
9 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
10 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
11 § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

28 49. By and through the unlawful and unfair business practices described herein,

1 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
2 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
3 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
4 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
5 to unfairly compete against competitors who comply with the law.

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

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

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

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

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1 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

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

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

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

20
21 **THIRD CAUSE OF ACTION**

22 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

21 74. DEFENDANT's unlawful wage and hour practices manifested, without
22 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
23 implementing a policy and practice that failed to accurately record overtime worked by
24 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
27 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
28 workweek.

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

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

10 77. 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
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
14 subject to a valid collective bargaining agreement that would preclude the causes of action
15 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
16 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
17 negotiable, non-waiveable rights provided by the State of California.

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

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

28 80. 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 amount of 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 81. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
8 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
9 to not pay employees for their labor as a matter of company policy, practice and procedure, and
10 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
11 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

1 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

28 86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

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

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

10
11 **SIXTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code § 226]**

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

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

19 93. Cal. Labor Code § 226 provides that an employer must furnish employees with
20 an "accurate itemized" statement in writing showing:

- 21 (1) gross wages earned,
22 (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the
25 Industrial Welfare Commission,
26 (3) the number of piecerate units earned and any applicable piece rate if the employee
27 is paid on a piece-rate basis,
28 (4) all deductions, provided that all deductions made on written orders of the
 employee may be aggregated and shown as one item,
 (5) net wages earned,
 (6) the inclusive dates of the period for which the employee is paid,
 (7) the name of the employee and his or her social security number, except that by
 January 1, 2008, only the last four digits of his or her social security number or an
 employee identification number other than a social security number may be shown on
 the itemized statement,

1 (8) the name and address of the legal entity that is the employer, and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

3 94. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
5 wage statements which failed to show, among other things, the correct gross and net wages
6 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
7 employees with an accurate itemized wage statement in writing showing, among other
8 things, gross wages earned and all applicable hourly rates in effect during the pay period and
9 the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT
10 violated Section 226 by failing to identify the correct rates of pay and number of hours
11 worked, including for the “on call fee,” item of pay, which is a non-discretionary incentive
12 wage payment. Aside, from the violations listed above in this paragraph, DEFENDANT
13 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
14 under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
15 provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 with wage statements which violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

9 97. 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
14 under contract, subcontract, partnership, station plan, or other agreement if the
labor to be paid for is performed personally by the person demanding
15 payment.

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

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

20 If an employee not having a written contract for a definite period quits his or
her employment, his or her wages shall become due and payable not later than
21 72 hours thereafter, unless the employee has given 72 hours previous notice of
his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be entitled to
23 receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
24 purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

27 101. Cal. Lab. Code § 203 provides:

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

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

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

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

15 108. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
18 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
19 wages, (d) failed to pay minimum wages, and (e) failed to pay wages when due, all in
20 violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
21 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
22 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
23 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
24 such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
25 Labor Code Private Attorney General Act of 2004 as the representative of the State of

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

1 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES.

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

8
9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

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

- 24 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
25 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
26 pursuant to Cal. Code of Civ. Proc. § 382;
27 B) Compensatory damages, according to proof at trial, including compensatory
28 damages for minimum and overtime compensation due PLAINTIFF and the other

members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

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

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

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

4. On all claims:

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

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

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the

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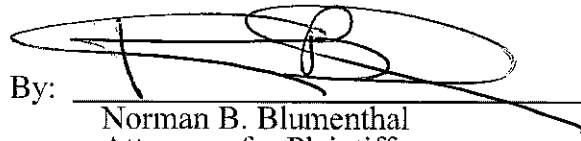
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1 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.

2
3 Dated: September 29, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

4
5
6 By: 
7 Norman B. Blumenthal
8 Attorneys for Plaintiff
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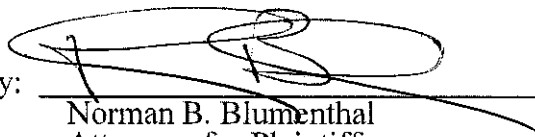
DEMAND FOR A JURY TRIAL

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

Dated: September 29, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____

A handwritten signature in black ink, appearing to read "Norman B. Blumenthal", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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Phone: (858) 551-1223

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

April 15, 2020

CA2077

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Verio Healthcare, Inc.
Certified Mail # 70142120000378197004
Eric Schrier
19517 Pauling
Foothill Ranch, CA 92610

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 Verio Healthcare, 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 Jeffrey Gregory (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Verio Healthcare, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2018 to January 24, 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendants failed to advise Plaintiff and the other Aggrieved Employees of

their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

9
10 JEFFREY GREGORY, an individual, on behalf
11 of himself and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 vs.

15 VERIO HEALTHCARE, INC., a California
16 Corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

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

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

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

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

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a supplier of quality manufactured disposable medical supplies.
10 Besides being a Durable Medical Equipment provider DEFENDANT also offers a large
11 selection of medical supplies and disposables for homecare patients.

12 3. PLAINTIFF was employed by DEFENDANT in California from August of 2018
13 to January 24, 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 **THE CONDUCT**

24
25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. DEFENDANT required these employees to work off the clock
3 without paying them for all the time they were under DEFENDANT's control. Specifically,
4 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to
5 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
6 assignments. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
7 time worked by working without their time being accurately recorded and without compensation
8 at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and
9 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
10 is evidenced by DEFENDANT's business records. DEFENDANT knew or should have known
11 that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
12 working off the clock and were under compensated for their time worked.

13 9. State law provides that employees must be paid overtime at one-and-one-half
14 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
16 employee's performance, including but not limited to, on-call flat sum wages.

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

1 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
2 DEFENDANT.

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

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

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

1 employer, including all the time the employee was permitted or suffered to permit this work.
2 DEFENDANT required these employees to work off the clock without paying them for all the
3 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
4 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
5 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
6 Members forfeited time worked by working without their time being accurately recorded and
7 without compensation at the applicable minimum wage and overtime wage rates. To the extent
8 that the time worked off the clock did not qualify for overtime premium payment,
9 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
10 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

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

16 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
18 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
19 did not have a policy or practice which provided timely off-duty meal and rest breaks to
20 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
21 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
22 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
24 DEFENDANT’s business records. As a result of DEFENDANT not accurately recording
25 minimum and overtime wages due and/or the hours and rates for the on call fee item of pay, the
26 wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in
27 particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all
28 of his wages due to him and DEFENDANT has failed to pay any penalties owed to him under

1 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
2 does not exceed the sum or value of \$75,000.

3 4 **JURISDICTION AND VENUE**

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

9 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
11 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
12 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
13 committed the wrongful conduct herein alleged in this County against members of the
14 CALIFORNIA CLASS.

15 16 **THE CALIFORNIA CLASS**

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

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

1 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

8 23. DEFENDANT has the legal burden to establish that each and every
9 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
10 required by California laws. The DEFENDANT, however, as a matter of uniform and
11 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
12 PERIOD and still fails to have in place a policy or practice to ensure that each and every
13 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
14 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
15 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
16 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

17 24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

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

28 (b) Committing an act of unfair competition in violation of the UCL, by

1 failing to provide the PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

1 make class certification inappropriate. Counsel for the CALIFORNIA
2 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
3 Members.

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

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

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

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

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

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

1 relief, injunctive relief, and incidental equitable relief as may be
2 necessary to prevent and remedy the conduct declared to constitute
3 unfair competition;

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

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

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

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

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

28 3) In the context of wage litigation because a substantial number of

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

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

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

- 13 (a) The questions of law and fact common to the CALIFORNIA CLASS
14 predominate over any question affecting only individual CALIFORNIA
15 CLASS Members because the DEFENDANT's employment practices are
16 uniform and systematically applied with respect to the CALIFORNIA
17 CLASS;
- 18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CALIFORNIA
20 CLASS because in the context of employment litigation a substantial
21 number of individual CALIFORNIA CLASS Members will avoid
22 asserting their rights individually out of fear of retaliation or adverse
23 impact on their employment;
- 24 (c) The members of the CALIFORNIA CLASS are so numerous that it is
25 impractical to bring all members of the CALIFORNIA CLASS before the
26 Court;
- 27 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
28 able to obtain effective and economic legal redress unless the action is

maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California

1 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
2 to the filing of the complaint and ending on the date as determined by the Court (the
3 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
4 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
5 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 minimum and overtime compensation due to members of the

CALIFORNIA LABOR SUB-CLASS and wages due for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute

meal breaks and the legally required off-duty rest breaks; and,

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

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
25 or refused to act on grounds generally applicable to the CALIFORNIA
26 LABOR SUB-CLASS, making appropriate class-wide relief with respect
27 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
28 DEFENDANT uniformly fails to pay all wages due. Including the correct

1 wages for all time worked by the members of the CALIFORNIA LABOR
2 SUB-CLASS as required by law;

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

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

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

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

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

28 3) In the context of wage litigation because a substantial number of

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

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

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

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 LABOR SUB-CLASS because in the context of employment litigation a
20 substantial number of individual CALIFORNIA LABOR SUB-CLASS
21 Members will avoid asserting their rights individually out of fear of
22 retaliation or adverse impact on their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that it is impractical to bring all members of the CALIFORNIA
25 LABOR SUB-CLASS before the Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
27 Members, will not be able to obtain effective and economic legal redress
28 unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
12 CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
14 ascertainable from the business records of DEFENDANT. The
15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
16 CLASS Members who worked for DEFENDANT in California at any
17 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to bring
19 a efficient and rapid conclusion to all litigation of all wage and hour
20 related claims arising out of the conduct of DEFENDANT as to the
21 members of the CALIFORNIA LABOR SUB-CLASS.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

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

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

1 Complaint.

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

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

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

12 Cal. Bus. & Prof. Code § 17203.

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

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

26 44. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
27 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
28 mandated meal and rest periods, the required amount of compensation for missed meal and rest

1 periods and overtime and minimum wages owed, and failed to timely pay wages, due to a
2 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
3 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et*
4 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
5 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

28 50. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California
2 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
3 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
4 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

21
22 **SECOND CAUSE OF ACTION**

23 **For Failure To Pay Minimum Wages**

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

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

26 **and Against All Defendants)**

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

1 paragraphs of this Complaint.

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

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

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

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

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

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

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

1 requirements and other applicable laws and regulations.

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

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

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

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

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

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

12
13 **THIRD CAUSE OF ACTION**

14 **For Failure To Pay Overtime Compensation**

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

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

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

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

27 70. 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 71. Cal. Lab. Code § 510 further provides that employees in California shall not be
2 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
3 unless they receive additional compensation beyond their regular wages in amounts specified
4 by law.

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

9 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
11 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

20 75. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
24 of the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

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

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

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

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

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

25 81. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
27 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
28 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,

1 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
2 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
3 overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

1 each workday that a meal period was not provided.

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

6
7 **FIFTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

9 97. 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
14 under contract, subcontract, partnership, station plan, or other agreement if the
labor to be paid for is performed personally by the person demanding
15 payment.

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

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

20 If an employee not having a written contract for a definite period quits his or
her employment, his or her wages shall become due and payable not later than
21 72 hours thereafter, unless the employee has given 72 hours previous notice of
his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be entitled to
23 receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
24 purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

27 101. Cal. Lab. Code § 203 provides:

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

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

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

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

13
14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

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

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

21 3. On all claims:

- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §226 and/or §1194.
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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