

COPY

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 02 2020

BY 
ELISABETH MARTINEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ROMAN PEREZ, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

BUTLER AMERICA, LLC, a Limited
Liability Company; and Does 1 through
50, Inclusive,

Defendants.

Case No. **CIV DS 2018372**

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of 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), and the applicable Wage Order(s).

BY FAX

1 Plaintiff Roman Perez (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant Butler America, LLC
9 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
10 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFF does not seek to recover anything other than penalties as permitted by
12 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
13 violations, PLAINTIFF does not seek underlying general and/or special damages for those
14 violations, but simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 THE PARTIES

25 4. Defendant Butler America, LLC (“DEFENDANT”) is a limited liability
26 corporation and at all relevant times mentioned herein conducted and continues to conduct
27 substantial and regular business in the state of California.

1 5. DEFENDANT provides technical services. The Company offers engineering,
2 technology, aftermarket, and other related services to defense, energy, telecommunications, and
3 healthcare sectors.

4 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
5 employee entitled to overtime pay and meal and rest periods from July of 2016 to on or about
6 July 14, 2019. PLAINTIFF was at all times relevant mentioned herein classified by
7 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
8 received additional compensation from DEFENDANT in the form of non-discretionary
9 incentive wages.

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

17 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
18 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
19 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
20 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
21 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
22 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
23 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
24 the meaning of Labor Code § 2699, *et seq.*

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

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

15 16 **THE CONDUCT**

17 11. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
18 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
19 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
20 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
21 meaning the time during which an employee was subject to the control of an employer,
22 including all the time the employee was permitted or suffered to permit this work.
23 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
24 without paying them for all the time they were under DEFENDANT's control. As a result of
25 their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
26 time to time not fully relieved of duty by DEFENDANT for their meal periods and would clock
27 out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction
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1 during what should have been their off-duty meal period. Additionally, DEFENDANT required
2 these employees to work off the clock without paying them for all the time they were under
3 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF and other
4 AGGRIEVED EMPLOYEES to drive their work vehicles back to DEFENDANT's office, as
5 this was the only feasible way to travel to various work sites assigned by DEFENDANT.
6 DEFENDANT failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all of their time
7 they spent traveling on DEFENDANT's behalf from their last work assignment of their shift
8 to DEFENDANT's office to drop off their work vehicles. Also, from time to time PLAINTIFF
9 and other AGGRIEVED EMPLOYEES were required to respond to DEFENDANT while off
10 the clock at their homes after their work shift had ended via their cell phones for work related
11 requests, including but not limited, scope of work order and issues. As such, DEFENDANT
12 knew or should have known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were
13 under compensated for all time worked. As a result, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES forfeited time worked by working without their time being accurately recorded
15 and without compensation at the applicable minimum wage and overtime wage rates. To the
16 extent that the time worked off the clock did not qualify for overtime premium payment,
17 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
18 Cal. Lab. Code §§ 1194, 1197, and 1197.1. As a result, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES forfeited minimum wages and overtime wage compensation by working without
20 their time being correctly recorded and without compensation at the applicable rates.
21 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

23 12. In addition, when DEFENDANT required PLAINTIFF and other AGGRIEVED
24 EMPLOYEES to engage in additional work after their shift ended, this resulted in a second
25 reporting for work in a single workday. In such a circumstance of a second reporting for work
26 in a single workday, DEFENDANT failed to pay these employees reporting time pay as
27 required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is
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1 required to report for work a second time in any one workday and is furnished less than two (2)
2 hours of work on the second reporting, said employee shall be paid for two (2) hours at the
3 employee's regular rate of pay, which shall not be less than the minimum wage." Cal. Code
4 Regs., tit. 8, § 11040, subd. 5(B).

5 13. State law provides that employees must be paid overtime at one-and-one-half
6 times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
7 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

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

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

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

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

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

20 19. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
21 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
22 to accurately calculate and record the correct overtime rate for the overtime worked by
23 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
24 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
25 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
26 calculate and/or pay all required overtime compensation for work performed by the
27 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations

1 promulgated thereunder as herein alleged.

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

7 **JURISDICTION AND VENUE**

8 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10.

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

16 **FIRST CAUSE OF ACTION**

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

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

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

20 23. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-22,
21 supra, as though fully set forth at this point.

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

5 25. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
10 during the time period of April 15, 2019 until a date as determined by the Court (the "PAGA
11 PERIOD").

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

20 27. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
23 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
24 to pay overtime wages, and (e) failed to pay wages when due, all in violation of the applicable
25 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7,
26 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
27 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
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1 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
2 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
3 the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
4 and the other AGGRIEVED EMPLOYEES.

5 **PRAYER FOR RELIEF**

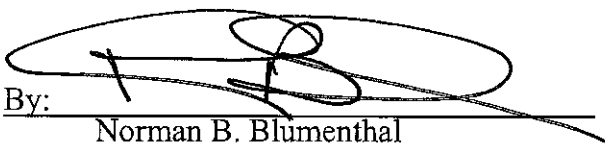
6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the State of California and with respect to all AGGRIEVED
9 EMPLOYEES:

10 A) Recovery of civil penalties as prescribed by the Labor Code Private
11 Attorneys General Act of 2004; and,

12 B) An award of attorneys' fees and cost of suit, as allowable under the
13 law, including, but not limited to, pursuant to Labor Code §2699.

14
15 Dated: September 1, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

16
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18 By: 

19 Norman B. Blumenthal
20 Attorneys for Plaintiff
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

April 15, 2020

CA2020

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Butler America, LLC
Certified Mail #70142120000378196878
Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292

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 Butler America, LLC as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiff Roman Perez (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Butler America, LLC (“Defendant”). Plaintiff was employed by Defendant in California from July of 2016 to July of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to

advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to 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.

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ROMAN PEREZ, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BUTLER AMERICA, LLC, a Limited
Liability Company; and Does 1 through
50, Inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

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

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

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

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

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

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides technical services. The Company offers engineering,
10 technology, aftermarket, and other related services to defense, energy, telecommunications, and
11 healthcare sectors.

12 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from July of 2016 to July of 2019.
14 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
15 exempt employee paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

25 26 **THE CONDUCT**

27 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
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1 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
7 clock without paying them for all the time they were under DEFENDANT's control. As a result
8 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
9 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
10 clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's
11 direction during what should have been their off-duty meal period. Additionally, DEFENDANT
12 required these employees to work off the clock without paying them for all the time they were
13 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF and other
14 CALIFORNIA CLASS Members to drive their work vehicles back to DEFENDANT's office,
15 as this was the only feasible way to travel to various work sites assigned by DEFENDANT.
16 DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for all of their
17 time they spent traveling on DEFENDANT's behalf from their last work assignment of their
18 shift to DEFENDANT's office to drop off their work vehicles. Also, from time to time
19 PLAINTIFF and other CALIFORNIA CLASS Members were required to respond to
20 DEFENDANT while off the clock at their homes after their work shift had ended via their cell
21 phones for work related requests, including but not limited, scope of work order and issues.
22 As such, DEFENDANT knew or should have known that PLAINTIFF and the other members
23 of the CALIFORNIA CLASS were under compensated for all time worked. As a result,
24 PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working
25 without their time being accurately recorded and without compensation at the applicable
26 minimum wage and overtime wage rates. To the extent that the time worked off the clock did
27 not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for
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1 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As
2 a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wages and
3 overtime wage compensation by working without their time being correctly recorded and
4 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
5 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
6 DEFENDANT's business records.

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

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

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

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

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

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

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

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

6 7 **JURISDICTION AND VENUE**

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

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

18 **THE CALIFORNIA CLASS**

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

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

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

24 23. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
26 accurately calculate the “regular rate of pay” by including the incentive compensation that
27 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.

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

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

15 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

- 19 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
20 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
21 place company policies, practices and procedures that failed to pay all
22 minimum and overtime wages due the CALIFORNIA CLASS for all time
23 worked, and failed to accurately record the applicable rates of all overtime
24 worked by the CALIFORNIA CLASS;
- 25 (b) Committing an act of unfair competition in violation of the California
26 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
27 unlawfully, unfairly, and/or deceptively having in place a company policy,
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1 practice and procedure that failed to correctly calculate overtime
2 compensation due to PLAINTIFF and the members of the CALIFORNIA
3 CLASS;

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

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

15 27. 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 CLASS are so numerous
18 that the joinder of all such persons is impracticable and the disposition of
19 their claims as a class will benefit the parties and the Court;

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

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

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

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

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

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

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in

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

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

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

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

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

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

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

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

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

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

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16 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

- (d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- (e) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT's conduct was willful.

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

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

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

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

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

5 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

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

22 **and Against All Defendants)**

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

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

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

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

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

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

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

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

2 64. 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 65. 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 66. 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 67. 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 elected, either through intentional malfeasance or gross nonfeasance,
17 to not pay employees for their labor as a matter of company policy, practice and procedure, and
18 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
19 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

1 69. 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.

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18 **THIRD CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

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

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

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

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

7 72. 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 73. Cal. Lab. Code § 510 further provides that employees in California shall not be
10 employed more than eight (8) hours per workday and/or more than forty (40) hours per
11 workweek unless they receive additional compensation beyond their regular wages in amounts
12 specified by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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9 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

13
14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

15 16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226]**

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

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

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

26 (1) gross wages earned,

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

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

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

8 (5) net wages earned,

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

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

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

103. Cal. Lab. Code § 203 provides:

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

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA

CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory 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) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;
- D) 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;
- E) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until

- 1 an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
- 2 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 3 1197.
- 4 3. On all claims:
- 5 A) An award of interest, including prejudgment interest at the legal rate;
- 6 B) Such other and further relief as the Court deems just and equitable; and,
- 7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 8 law, including, but not limited to, pursuant to Labor Code § 226 and/or § 1194.
- 9

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

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12 By: _____

13 Norman B. Blumenthal

14 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