

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ANGELA KYLER, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC. a
Corporation; and Does 1 through 50,
Inclusive;

Defendants.

Case No. 37-2020-00042006-CU-OE-CTL

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),
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.

1 Plaintiff Angela Kyler (“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 her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant Harbor Freight Tools USA, Inc. (“DEFENDANT”) is a Corporation
24 that at all relevant times mentioned herein conducted and continues to conduct substantial and
25 regular business throughout California.

26 5. DEFENDANT is a privately held discount tool and equipment retailer,
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1 headquartered in Calabasas, California, which operates a chain of retail stores, as well as a
2 mail-order and e-commerce business

3 6. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
4 employee entitled to overtime pay and meal and rest periods since 2000. PLAINTIFF has been
5 at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee
6 paid in whole or in part on an hourly basis and received additional compensation from
7 DEFENDANT in the form of non-discretionary incentive wages, including, but not limited to,
8 commission wages and non-discretionary bonus wages.

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

15 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
16 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
17 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
18 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
19 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
20 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
21 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission
22 Wage Order(s), and Pursuant To California Labor Code Section 2699.5. 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 and continues to fail to
18 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
19 overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate
20 wages for overtime worked by PLAINTIFF and other AGGRIEVED EMPLOYEES in order
21 to avoid paying these employees the correct overtime compensation. As a result, PLAINTIFF
22 and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime
23 without compensation at the correct overtime rates. DEFENDANT's policy and practice to not
24 pay the AGGRIEVED EMPLOYEES the correct overtime rate for all overtime worked in
25 accordance with applicable law is evidenced by DEFENDANT's business records. This policy
26 and practice of DEFENDANT was intended to purposefully avoid the payment of the correct
27 overtime compensation as required by the California Labor Code which allowed DEFENDANT
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1 to illegally profit and gain an unfair advantage over competitors who complied with the law.

2 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
3 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
4 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
5 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
6 time worked, meaning the time during which an employee was subject to the control of an
7 employer, including all the time the employee was permitted or suffered to permit this work.
8 DEFENDANT required these employees to work off the clock without paying them for all the
9 time they were under DEFENDANT's control. Specifically, DEFENDANT required
10 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
11 meal break. PLAINTIFF was from time to time interrupted by work assignments. As a result,
12 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
13 compensation by from time to time working without their time being accurately recorded and
14 without compensation at the applicable minimum wage and overtime rates. To the extent that
15 the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
16 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
17 §§ 1194, 1197, and 1197.1.

18 13. State and federal law provides that employees must be paid overtime at one-and-
19 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
20 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
21 employee's performance including but not limited to commission wages..

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

9 15. On certain workdays, PLAINTIFF and other AGGRIEVED EMPLOYEES were
10 required to report to work, but were not put to work or furnished with less than half of his or her
11 usual or scheduled day's work. In such a circumstance, DEFENDANT failed to pay these
12 employees for half the usual or scheduled day's work, but in no event for less than two hours
13 nor more than four hours, at his or her regular rate of pay as required by Cal. Code Regs., tit.
14 8, § 11040. Subdivision 5(a) states: "Each workday an employee is required to report for work
15 and does report, but is not put to work or is furnished less than half said employee's usual or
16 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
17 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular
18 rate of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040,
19 subd. 5(A). When DEFENDANT required PLAINTIFF and other AGGRIEVED
20 EMPLOYEES to report back to the store for work tasks, including but not limited to,
21 responding to an alarm call, after working their scheduled shift for the day, this resulted in a
22 second reporting for work in a single workday. In such a circumstance of a second reporting
23 for work in a single workday, DEFENDANT failed to pay these employees reporting time pay
24 as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is
25 required to report for work a second time in any one workday and is furnished less than two (2)
26 hours of work on the second reporting, said employee shall be paid for two (2) hours at the
27 employee's regular rate of pay, which shall not be less than the minimum wage." Cal. Code
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1 Regs., tit. 8, § 11040, subd. 5(B).

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

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

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

17 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
18 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
19 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
20 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
21 2802, employers are required to indemnify employees for all expenses incurred in the course
22 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
24 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
25 directions of the employer, even though unlawful, unless the employee, at the time of obeying
26 the directions, believed them to be unlawful."

27 20. In the course of their employment PLAINTIFF and other AGGRIEVED
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1 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
2 cellular phones as a result of and in furtherance of their job duties as employees for
3 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
4 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
5 course of their employment with DEFENDANT the PLAINTIFF and other AGGRIEVED
6 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
7 to, costs related to the use of their personal cellular phones, on behalf of and for the benefit of
8 DEFENDANT.

9 21. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California
10 stores are generally similar in their layout and design and that there is ample space behind each
11 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
12 employees during the performance of their work duties. DEFENDANT's non-exempt
13 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
14 workdays, the vast majority of their working time behind these counters. The nature of the
15 work can reasonably be accomplished while using a seat/stool.

16 22. In violation of the applicable sections of the California Labor Code and the
17 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
18 DEFENDANT intentionally and knowingly fails to provide PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES suitable seating when the nature of these employees' work
20 reasonably permits sitting.

21 23. DEFENDANT knew or should have known that PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
23 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
24 suitable seating and/or did not allow them to sit when it did not interfere with the performance
25 of their duties.

26 24. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
27 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-

1 2001, Section 14 by failing to provide suitable seats.

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

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

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

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JURISDICTION AND VENUE

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

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act
[Cal. Lab. Code §§ 2698, *et seq.*]
(By PLAINTIFF and Against All Defendants)

30. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-29, supra, as though fully set forth at this point.

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

32. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to

1 herself and all individuals who are or previously were employed by DEFENDANT in California
2 and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time
3 period of April 15, 2019 until a date as determined by the Court (the "PAGA PERIOD").

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

12 34. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
15 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
16 to pay overtime wages, (e) failed to reimburse employees for required expenses, and (f) failed
17 to provide seating, all in violation of the applicable Labor Code sections listed in Labor Code
18 §§201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
19 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
20 (B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating),
21 Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To
22 California Labor Code Section 2699.5, and thereby gives rise to civil penalties as a result of
23 such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
24 Labor Code Private Attorney General Act of 2004 as the representative of the State of
25 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED

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

1 EMPLOYEES.

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3 **PRAYER FOR RELIEF**

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

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

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

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

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13 Dated: November 17, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
14 LLP

15
16 By: /s/ Norman Blumenthal
17 Norman B. Blumenthal
18 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

April 15, 2020
CA2108

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Harbor Freight Tools USA, Inc.
Certified Mail #70142120000378196861
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 Harbor Freight Tools USA, Inc. in California and classified as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiff Angela Kyler (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Harbor Freight Tools USA, Inc. (“Defendant”). Plaintiff has been employed by Defendant in California since 2000 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd.

5(B). Further, Defendants failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

10 ANGELA KYLER, an individual, on behalf
11 of herself and on behalf of all persons
similarly situated,

12 Plaintiff,

13 vs.

14 HARBOR FREIGHT TOOLS USA, INC. a
15 Corporation; and Does 1 through 50,
Inclusive;

16 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Harbor Freight Tools USA, Inc. (“DEFENDANT”) is a Corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business throughout California.

9 2. DEFENDANT is a privately held discount tool and equipment retailer,
10 headquartered in Calabasas, California, which operates a chain of retail stores, as well as a
11 mail-order and e-commerce business

12 3. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods since 2000. PLAINTIFF has been
14 at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee
15 paid in whole or in part on an hourly basis and received additional compensation from
16 DEFENDANT in the form of non-discretionary incentive wages, including, but not limited to,
17 commission wages and non-discretionary bonus wages.

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

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

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

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

26 ///

27 ///

THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct overtime compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for working overtime without compensation at the correct overtime rates. DEFENDANT's policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's business records. This policy and practice of DEFENDANT was intended to purposefully avoid the payment of the correct overtime compensation as required by the California Labor Code which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law.

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. To the extent that

1 the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
2 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
3 §§ 1194, 1197, and 1197.1.

4 10. State and federal law provides that employees must be paid overtime at one-and-
5 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
6 Members were compensated at an hourly rate plus incentive pay that was tied to specific
7 elements of an employee’s performance including but not limited to commission wages..

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

22 12. On certain workdays, PLAINTIFF and other CALIFORNIA CLASS Members
23 were required to report to work, but were not put to work or furnished with less than half of his
24 or her usual or scheduled day’s work. In such a circumstance, DEFENDANT failed to pay these
25 employees for half the usual or scheduled day’s work, but in no event for less than two hours
26 nor more than four hours, at his or her regular rate of pay as required by Cal. Code Regs., tit.
27 8, § 11040. Subdivision 5(a) states: “Each workday an employee is required to report for work
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1 and does report, but is not put to work or is furnished less than half said employee's usual or
2 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
3 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular
4 rate of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040,
5 subd. 5(A). When DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS
6 Members to report back to the store for work tasks, including but not limited to, responding to
7 an alarm call, after working their scheduled shift for the day, this resulted in a second reporting
8 for work in a single workday. In such a circumstance of a second reporting for work in a single
9 workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal.
10 Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is required to report for
11 work a second time in any one workday and is furnished less than two (2) hours of work on the
12 second reporting, said employee shall be paid for two (2) hours at the employee's regular rate
13 of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040, subd.
14 5(B).

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

25 14. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take off duty meal breaks
27 and were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA
28

1 CLASS Members were from time to time required to perform work as ordered by
2 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
3 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
4 Members with a second off-duty meal period from time to time in which these employees were
5 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other
6 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

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

22 18. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California
23 stores are generally similar in their layout and design and that there is ample space behind each
24 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
25 employees during the performance of their work duties. DEFENDANT's non-exempt
26 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
27 workdays, the vast majority of their working time behind these counters. The nature of the
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1 work can reasonably be accomplished while using a seat/stool.

2 19. In violation of the applicable sections of the California Labor Code and the
3 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
4 DEFENDANT intentionally and knowingly fails to provide PLAINTIFF and the other
5 CALIFORNIA CLASS Members suitable seating when the nature of these employees' work
6 reasonably permits sitting.

7 20. DEFENDANT knew or should have known that PLAINTIFF and other
8 CALIFORNIA CLASS Members were entitled to suitable seating and/or were entitled to sit
9 when it did not interfere with the performance of their duties, and that DEFENDANT did not
10 provide suitable seating and/or did not allow them to sit when it did not interfere with the
11 performance of their duties.

12 21. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
13 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
14 2001, Section 14 by failing to provide suitable seats.

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

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

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

8 9 **JURISDICTION AND VENUE**

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

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

19 **THE CALIFORNIA CLASS**

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

2 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
3 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
4 accordingly.

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

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

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

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

16 33. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 34. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
19 law by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) Common questions of law and fact exist as to the members of the
27 CALIFORNIA CLASS, with respect to the practices and violations of
28

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

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

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

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

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

23 3) In the context of wage litigation because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting
25 their legal rights out of fear of retaliation by DEFENDANT, which
26 may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to
28

1 assert their claims through a representative; and,

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

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

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

1 damages and injuries which DEFENDANT's actions have inflicted upon
2 the CALIFORNIA CLASS;

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

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

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

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

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

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

22 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
23 causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

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

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS the correct overtime pay for which DEFENDANT is liable
4 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
12 meal breaks and the legally required rest breaks; and,
- 13 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
14 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
15 itemized statement in writing showing all accurate and applicable
16 overtime rates in effect during the pay period and the corresponding
17 amount of time worked at each overtime rate by the employee; and,
- 18 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
19 the CALIFORNIA LABOR SUB-CLASS members with necessary
20 expenses incurred in the discharge of their job duties.

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

- 23 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
24 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
25 Members is impracticable and the disposition of their claims as a class
26 will benefit the parties and the Court;
- 27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14 **FIRST CAUSE OF ACTION**

15 **For Unlawful Business Practices**

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

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

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

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

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

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

1 may make such orders or judgments, including the appointment of a receiver, as
2 may be necessary to prevent the use or employment by any person of any practice
3 which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

4 Cal. Bus. & Prof. Code § 17203.

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

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

19 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
20 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
21 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
22 failed to pay reporting time wages, failed to reimburse necessary business expenses incurred,
23 failed to accurately to record the applicable rate of all overtime worked, and failed to provide
24 the required amount of overtime compensation due to 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,
28

1 including restitution of wages wrongfully withheld.

2 55. 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 56. 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 57. Therefore, PLAINTIFF demands on behalf of herself 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 58. PLAINTIFF further demands on behalf of herself 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 59. 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 60. 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 61. 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 62. 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 63. 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.

17
18 **SECOND 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 64. 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 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28

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

7 66. 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 67. 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 68. 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 69. 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 70. 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,
28

1 the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
2 workweek.

3 71. 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 72. 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 73. 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, the PLAINTIFF brings this Action on behalf of herself and the
18 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
19 non-waiveable rights provided by the State of California.

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

24 75. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
26 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
27 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
28

1 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
2 to accurately record and pay using the applicable overtime rate as evidenced by
3 DEFENDANT's business records and witnessed by employees.

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

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

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

24 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
26 interest, statutory costs, as well as the assessment of any statutory penalties against
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
28

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

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

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

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

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

13 81. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
16 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
17 CALIFORNIA CLASS Members.

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

20 83. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than
22 the minimum so fixed is unlawful.

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

25 85. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
27 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
28

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

15 93. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
17 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
18 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
19 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
20 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

21
22 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

25 101. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28

1 suit.

2 **SIXTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 2802]**

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

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

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

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

14 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
15 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
16 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
17 benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
18 CLASS members for expenses which include, but are not limited to, costs related to using their
19 personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's
20 policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA LABOR
21 SUB-CLASS members for expenses resulting from using their personal cellular phones for
22 DEFENDANT within the course and scope of their employment for DEFENDANT. These
23 expenses are necessary to complete their principal job duties. As a result, in the course of their
24 employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA
25 LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not
26 limited to, costs related to using their personal cell phones all on behalf of and for the benefit
27 of DEFENDANT. These expenses are necessary to complete their principal job duties.

1 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
2 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
3 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT fails to indemnify and
4 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
5 expenses as an employer is required to do under the laws and regulations of California.

6 105. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
7 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
8 duties for DEFENDANT, or their obedience to the directions of DEFENDANT.

9
10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

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

20 (1) gross wages earned,

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

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

27 (4) all deductions, provided that all deductions made on written orders of the employee
28

1 may be aggregated and shown as one item,
2 (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and his or her social security number, except that by
5 January 1, 2008, only the last four digits of his or her social security number or an
6 employee identification number other than a social security number may be shown on
7 the itemized statement,
8 (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.

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

23 109. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
24 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
26 expended calculating the correct rates for the overtime worked and the amount of employment
27 taxes which were not properly paid to state and federal tax authorities. These damages are
28

1 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
2 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
4 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
5 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
6 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

7
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
2 at the statutory rate;

3 C) Meal and rest period compensation pursuant to California Labor Code Section
4 226.7 and the applicable IWC Wage Order;

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

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

13 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197.

15 3. On all claims:

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

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

18 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
20 §2802.

21
22 Dated: April 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

23
24 By: /s/ Norman Blumenthal
25 Norman B. Blumenthal
26 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: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff