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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SHARRON HARVILLE and TERRELL
CLARK, individuals, on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

NORTH FV LLC, a Limited Liability
Company; FRC NORTH ONE PASEO LLC;
a Limited Liability Company; FRC NORTH
(PARK PLACE) LLC, a Limited Liability
Company; FRC NORTH THE POINT LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2021-00000397-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
10. VIOLATION OF GOVT. CODE § 12940
11. VIOLATION OF GOVT. CODE § 12940; and,
12. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Sharron Harville and Terrell Clark (“PLAINTIFFS”), individuals, on behalf
2 of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendants North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
8 LLC and FRC North The Point LLC are limited liability companies that at all relevant times
9 mentioned herein conducted and continue to conduct substantial business in the state of
10 California.

11 2. As evidenced by PLAINTIFFS’ paychecks and company documents, Defendants
12 North FV LLC, FRC North One Paseo LLC, FRC North (Park Place) LLC and FRC North The
13 Point LLC were joint employers of PLAINTIFFS and are referred to herein as
14 (“DEFENDANT”).

15 3. DEFENDANT is an Italian food eatery chain.

16 4. PLAINTIFFS allege there has existed a unity of interest and ownership between
17 Defendants described in paragraph #1 herein such that any individuality and separateness
18 between the entities has ceased. North FV LLC, FRC North One Paseo LLC, FRC North (Park
19 Place) LLC and FRC North The Point LLC , and DOES 1-10 are therefore alter egos of each
20 other. Adherence to the fiction of the separate existence of these Defendants would permit an
21 abuse of the corporate privilege, and would promote injustice by protecting these Defendants
22 from liability for the wrongful acts committed by them under the name North Italia.

23 5. PLAINTIFFS further allege that North FV LLC, FRC North One Paseo LLC,
24 FRC North (Park Place) LLC and FRC North The Point LLC are the alter egos of each other
25 for the following reasons:

26 (A) On the California Secretary of State’s website
27 (<https://businesssearch.sos.ca.gov/>) North FV LLC, FRC North One Paseo
28 LLC, FRC North (Park Place) LLC and FRC North The Point LLC have

1 the same entity address and/or mailing address;

2 (B) On information and belief North FV LLC, FRC North One Paseo LLC,
3 FRC North (Park Place) LLC and FRC North The Point LLC utilize the
4 same standardized employment forms and issue the same employment
5 policies; and,

6 (C) North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
7 LLC and FRC North The Point LLC share the same agent for service of
8 process, United States Corporation Company.

9 6. Plaintiff Harville was employed by DEFENDANT in California from October of
10 2018 to February of 2020. Plaintiff Harville was entitled to the legally required meal and rest
11 periods and payment of minimum and overtime wages due for all time worked.

12 7. Plaintiff Clark has been employed by DEFENDANT in California since
13 September of 2018. Plaintiff Clark is entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California
16 class, defined as all individuals who are or previously were employed by North FV LLC and/or
17 FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North The Point
18 LLC in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at
19 any time during the period beginning four (4) years prior to the filing of this Complaint and
20 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
21 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
22 million dollars (\$5,000,000.00).

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

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

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

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

23 24 **THE CONDUCT**

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

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

11 13. In addition, State and federal law provides that employees must be paid overtime
12 at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA
13 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific
14 elements of an employee's performance.

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

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

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

1 employees to take rest period means that employers must relieve employees of all duties and
2 relinquish control over how employees spend their time which includes control over the
3 locations where employees may take their rest period. Employers cannot impose controls that
4 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
5 DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members
6 from unconstrained walks and was unlawful based on Defendant's rule which stated
7 PLAINTIFFS and other CALIFORNIA CLASS Members could not leave the work premises
8 during their rest period.

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

19 18. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
20 Members as a business expense, were required by DEFENDANT to use their own personal
21 cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit.
24 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
25 DEFENDANT to use their personal cell phones for work related issues, including downloading
26 an application on their personal cell phone for scheduling purposes called "hot schedules." As
27 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
28 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which

1 included, but were not limited to, costs related to the use of their personal cellular phones all
2 on behalf of and for the benefit of DEFENDANT.

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

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

26 21. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA
27 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
28 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by

1 engaging in a company-wide policy and procedure which failed to accurately calculate and
2 record all missed meal and rest periods by PLAINTIFFS and other CALIFORNIA CLASS
3 Members. The proper recording of these employees' missed meal and rest breaks is the
4 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
5 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
6 compensation for work performed by the members of the CALIFORNIA CLASS and violated
7 the California Labor Code and regulations promulgated thereunder as herein alleged.

8 22. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
9 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
10 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
11 did not have a policy or practice which provided timely off-duty meal and rest breaks to
12 PLAINTIFFS and also failed to compensate PLAINTIFFS for her missed meal and rest breaks.
13 The nature of the work performed by the PLAINTIFFS did not prevent her from being relieved
14 of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
15 failure to provide PLAINTIFFS with the legally required meal periods is evidenced by
16 DEFENDANT's business records. To date, DEFENDANT has yet to pay PLAINTIFFS all of
17 his wages due to PLAINTIFFS and DEFENDANT has failed to pay any penalty wages owed
18 to PLAINTIFFS under California Labor Code Section 203. The amount in controversy for
19 PLAINTIFFS individually does not exceed the sum or value of \$75,000. Prior to filing this
20 action, Plaintiff Harville exhausted her administrative remedies by filing a timely administrative
21 complaint with the Department of Fair Employment and Housing ("DFEH") and received a
22 DFEH right-to-sue letter on August 11, 2020. Prior to filing this action, Plaintiff Clark
23 exhausted his administrative remedies by filing a timely administrative complaint with the
24 Department of Fair Employment and Housing ("DFEH") and received a DFEH right-to-sue
25 letter on January 4, 2021.

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1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
3 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permits or suffers to permit this work.

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

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

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

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

1 and,

- 2 (c) Committing an act of unfair competition in violation of the California
3 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
4 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
5 the CALIFORNIA CLASS members with necessary expenses incurred in
6 the discharge of their job duties.

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

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

counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

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

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

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

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to

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

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

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

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

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

26 B. Adjudications with respect to individual members of the
27 CALIFORNIA CLASS would as a practical matter be
28

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

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

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

1 Court;

2 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
3 able to obtain effective and economic legal redress unless the action is
4 maintained as a Class Action;

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

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

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

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

35. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by North FV LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC in California and classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

- 20 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
21 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
22 CLASS all wages due for overtime worked, for which DEFENDANT is
23 liable pursuant to Cal. Lab. Code § 1194;
- 24 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
25 accurately pay PLAINTIFFS and the members of the CALIFORNIA
26 LABOR SUB-CLASS the correct minimum wage pay for which
27 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 28 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and

1 the members of the CALIFORNIA LABOR SUB-CLASS with an
2 accurate itemized statement in writing showing the corresponding correct
3 amount of wages earned by the employee;

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

8 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
9 the CALIFORNIA LABOR SUB-CLASS members with necessary
10 expenses incurred in the discharge of their job duties; and,

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

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

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

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

27 (c) The claims of the representative PLAINTIFFS are typical of the claims of
28 each member of the CALIFORNIA LABOR SUB-CLASS.

1 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
2 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
3 was subjected to the DEFENDANT's practice and policy which failed to
4 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
5 CLASS. PLAINTIFFS sustained economic injury as a result of
6 DEFENDANT's employment practices. PLAINTIFFS and the members
7 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
8 identically harmed by the same unlawful, deceptive and unfair misconduct
9 engaged in by DEFENDANT; and,

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

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

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

- 24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA LABOR SUB-CLASS which
26 would establish incompatible standards of conduct for the parties
27 opposing the CALIFORNIA LABOR SUB-CLASS; or,
28 2) Adjudication with respect to individual members of the

CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to

individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

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

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a

1 substantial number of individual CALIFORNIA LABOR SUB-CLASS
2 Members will avoid asserting their rights individually out of fear of
3 retaliation or adverse impact on their employment;

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

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

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

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

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

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

27 (i) Class treatment provides manageable judicial treatment calculated to bring
28 a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

7 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

8 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
12 Code § 17021.

13 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
14 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
15 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
16 competition as follows:

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

21 Cal. Bus. & Prof. Code § 17203.

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

1 48. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages wrongfully
6 withheld.

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

16 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
17 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
18 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
19 DEFENDANT.

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

24 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
25 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
26 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
27 for each workday in which a second off-duty meal period was not timely provided for each ten
28 (10) hours of work.

1 53. PLAINTIFFS further demand on behalf of themselves and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
3 duty paid rest period was not timely provided as required by law.

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

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

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

20 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
23 engaging in any unlawful and unfair business practices in the future.

24 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
28 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
2 engage in these unlawful and unfair business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

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

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

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

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

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

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

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

24 64. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
26 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

26 70. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
28 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,

1 to not pay employees for their labor as a matter of company policy, practice and procedure, and
2 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
3 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

23 ///

24 ///

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27 ///

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

25 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
27 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
28 including overtime work.

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

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

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

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

26 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
27 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
28 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

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

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

14 86. DEFENDANT knew or should have known that PLAINTIFFS and the other
15 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
16 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
17 to not pay employees for their labor as a matter of company policy, practice and procedure, and
18 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
19 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

28 88. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-

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

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

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

20 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
21 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
22 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
23 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
24 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
25 duties for the legally required off-duty meal periods. As a result of their rigorous work
26 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
27 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
28 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

1 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
2 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFFS
3 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
4 which these employees were required by DEFENDANT to work ten (10) hours of work. As
5 a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice.

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

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 94. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
27 from time to time required to work in excess of four (4) hours without being provided ten (10)
28 minute rest periods. Further, these employees from time to time were denied their first rest

1 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
2 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
3 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
4 some shifts worked of ten (10) hours or more. PLAINTIFFS and other CALIFORNIA LABOR
5 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result
6 of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
7 Members were periodically denied their proper rest periods by DEFENDANT and
8 DEFENDANT's managers.

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

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

18 19 **SIXTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 2802]**

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

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

28 An employer shall indemnify his or her employee for all necessary expenditures

1 or losses incurred by the employee in direct consequence of the discharge of his
2 or her duties, or of his or her obedience to the directions of the employer, even
3 though unlawful, unless the employee, at the time of obeying the directions,
4 believed them to be unlawful.

5 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
6 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
7 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
8 benefit. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
9 Members as a business expense, were required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
12 associated with the use of their personal cellular phones for DEFENDANT's benefit.
13 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
14 DEFENDANT to use their personal cell phones for work related issues. As a result, in the
15 course of their employment with DEFENDANT, PLAINTIFFS and other members of the
16 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
17 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
18 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA CLASS
19 Members were required to download and use a phone application named "Insperity" in order
20 to log their hours worked. PLAINTIFFS and other CALIFORNIA CLASS Members were
21 required to use their personal cell phones in order to download the phone application. Further,
22 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to
23 use their own personal vehicles in order to perform job tasks for DEFENDANT. As a result,
24 in the course of their employment with DEFENDANT, PLAINTIFFS and other members of the
25 CALIFORNIA CLASS also incurred unreimbursed business expenses related to the use of their
26 personal vehicles, on behalf of and for the benefit of DEFENDANT. These expenses were
27 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
28 conduct to assert any waiver of this expectation. Although these expenses were necessary
expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,

1 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
2 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
3 laws and regulations of California.

4 100. PLAINTIFFS therefore demands reimbursement for expenditures or losses
5 incurred by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
6 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
7 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

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

19 (1) gross wages earned,

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

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

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

28 (5) net wages earned,

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

9 103. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
10 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
11 statements which failed to show, among other things, the correct gross and net wages earned.
12 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
13 with an accurate itemized wage statement in writing showing, among other things, gross wages
14 earned and all applicable hourly rates in effect during the pay period and the corresponding
15 amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226
16 by failing to identify the correct rates of pay and number of hours worked, including for the
17 “Hourly OT” and “Hourly Regular” items of pay, which were wage payments. Aside from the
18 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS 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 PLAINTIFFS and the other members
21 of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab.
22 Code § 226.

23 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
24 § 226, causing injury and damages to PLAINTIFFS 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 wages for all missed meal and rest breaks and the amount of
27 employment taxes which were not properly paid to state and federal tax authorities. These
28

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

8 **EIGHTH CAUSE OF ACTION**

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

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

11 **(By Plaintiff Harville Against All Defendants and the CALIFORNIA LABOR SUB-
12 CLASS and Against All Defendants)**

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

16 106. Cal. Lab. Code § 200 provides that:

17 As used in this article:

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

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

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

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

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

1 who quits without providing a 72-hour notice shall be entitled to receive payment
2 by mail if he or she so requests and designates a mailing address. The date of the
3 mailing shall constitute the date of payment for purposes of the requirement to
4 provide payment within 72 hours of the notice of quitting.

5 109. There was no definite term in Plaintiff Harville's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

7 110. Cal. Lab. Code § 203 provides:

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

13 111. The employment of Plaintiff Harville and many CALIFORNIA LABOR SUB-
14 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
15 these employees, as required by law.

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

22 **NINTH CAUSE OF ACTION**

23 **For Wrongful Termination in Violation of Public Policy**

24 **(By Plaintiff Harville Against All Defendants)**

25 113. Plaintiff Harville realleges and incorporate by this reference, as though fully
26 set forth herein, the prior paragraphs of this Complaint.

27 114. Plaintiff Harville's wrongful termination in February of 2020 was for a pretextual
28 reason(s) to disguise DEFENDANT's unlawful employment practices directed at Plaintiff
Harville.

115. Within the State of California there exists a substantial and fundamental public policy, set forth in the California Government Code §12900 et seq., which forbids racial and/or national origin harassment/racial discrimination, retaliation, and wrongful termination. Unlawful harassment includes the right to be free from unwanted, offensive racial harassment, and the right to protest such conduct without fear of retaliation or further harm. This public policy of the state is one that benefits the public at large and guarantees the rights of an employee to perform their work free from racial harassment/discrimination/retaliation.

116. The motivating reason(s) for Plaintiff Harville's termination were national origin and/or racial harassment/discrimination and Plaintiff Harville's protests and/or resistance thereof. Plaintiff Harville's discharge from her position of employment was in violation of the public policies of the State of California.

117. As a result of DEFENDANT's actions, Plaintiff Harville has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

118. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and with a conscious disregard of Plaintiff Harville's rights, and Plaintiff Harville is entitled to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT and to deter such wrongful conduct in the future.

TENTH CAUSE OF ACTION
For Violation of Government Code §12940(a) - Racial Discrimination
(By Plaintiff Harville Against All Defendants)

119. Plaintiff Harville realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. Plaintiff Harville was employed by DEFENDANT.

121. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

1 122. Plaintiff Harville was terminated from her employment and/or suffered other
2 adverse employment actions.

3 123. Plaintiff Harville's race as an African American was a substantial motivating
4 reason(s) for her termination and other adverse employment actions, including termination
5 of her employment.

6 124. As a result of DEFENDANT's conduct, Plaintiff Harville has suffered
7 substantial losses in earnings and employment benefits and emotional distress in an amount
8 to be determined according to proof at trial.

9 125. In doing the acts herein alleged, DEFENDANT acted with malice and
10 oppression, and with a conscious disregard of Plaintiff Harville's rights, Plaintiff Harville is
11 entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish
12 DEFENDANT and to deter such wrongful conduct in the future.

13
14 **ELEVENTH CAUSE OF ACTION**
15 **For Violation of Government Code §12940(a) - Racial Discrimination**
16 **(By Plaintiff Clark Against All Defendants)**

17 126. Plaintiff Clark realleges and incorporate by this reference, as though fully set
18 forth herein, the prior paragraphs of this Complaint.

19 127. Plaintiff Clark is a current employee of DEFENDANT.

20 128. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

21 129. Plaintiff Clark Has been denied promotion and/or wage raises and/or other job
22 opportunities and/or suffered other adverse employment actions.

23 130. Plaintiff Clark's race as an African American was a substantial motivating
24 reason(s) for the adverse employment actions, including denial of job promotion and/or
25 wage raises and/or other job opportunities.

1 131. As a result of DEFENDANT's conduct, Plaintiff Clark has suffered
2 substantial losses in earnings and employment benefits and emotional distress in an amount
3 to be determined according to proof at trial.

4 132. In doing the acts herein alleged, DEFENDANT acted with malice and
5 oppression, and with a conscious disregard of Plaintiff Clark's rights, Plaintiff Clark is
6 entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish
7 DEFENDANT and to deter such wrongful conduct in the future.

8
9
10 **TWELFTH CAUSE OF ACTION**

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

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

13 **(By Plaintiff Harville and Against All Defendants)**

14 133. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

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

26 135. Plaintiff Harville, and such persons that may be added from time to time who
27 satisfy the requirements and exhaust the administrative procedures under the Private
28 Attorney General Act, brings this Representative Action on behalf of the State of California

1 with respect to herself and all individuals who worked for North FV LLC and/or FRC North
2 One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC in
3 California and were classified as non-exempt employees (the "AGGRIEVED
4 EMPLOYEES") during the time period of May 7, 2019 until a date as determined by the
5 Court (the "PAGA PERIOD").

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

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

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

1 Private Attorney General Act of 2004 as the representative of the State of California for the
2 illegal conduct perpetrated on Plaintiff Harville and the other AGGRIEVED EMPLOYEES.

3 138. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 Plaintiff Harville during the PAGA PERIOD, Plaintiff Harville seeks penalties for those
6 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*
7 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).
8

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly
12 and severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

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

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

3. On behalf of the Ninth and Tenth Causes of Action:

- 1 A) For all special damages which were sustained as a result of
2 DEFENDANT's conduct, including, but not limited to, back pay, front
3 pay, lost compensation and job benefits that Plaintiff Harville would have
4 received but for the retaliatory practices of DEFENDANT; and,
5 B) For all exemplary damages, according to proof, which were sustained as
6 a result of DEFENDANT's conduct.

7 4. On behalf of the Eleventh Cause of Action:

- 8 A) For all special damages which were sustained as a result of
9 DEFENDANT's conduct, including, but not limited to, back pay, front
10 pay, lost compensation and job benefits that Plaintiff Clark would have
11 received but for the retaliatory practices of DEFENDANT; and,
12 B) For all exemplary damages, according to proof, which were sustained as
13 a result of DEFENDANT's conduct.

14 5. On behalf of the State of California and with respect to all AGGRIEVED
15 EMPLOYEES:

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

18 6. On all claims:

- 19 A) An award of interest, including prejudgment interest at the legal rate;
20 B) Such other and further relief as the Court deems just and equitable; and,
21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
22 the law, including, but not limited to, pursuant to Labor Code §226,
23 §1194, and/or §2802.

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Dated: January 5, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: January 5, 2021 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

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WRITERS EXT:

1004

May 7, 2020
CA2104

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANTS

Labor and Workforce Development Agency	North FV LLC
Online Filing	FRC North The Point LLC
	FRC North (Park Place) LLC
	FRC North One Paseo LLC
	Certified Mail #7019228000075854749
	United States Corporation Company
	2710 Gateway Oaks Drive, Suite 150N
	Sacramento, CA 95833

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 Defendants North FV LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC, in California and classified as non-exempt employees during the time period of May 7, 2019 until a date as determined by the Court. Our offices represent Plaintiff Sharron Harville (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendants North FV LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC (“Defendants”). Plaintiff was employed by Defendants in California from October of 2018 to February of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control. Defendants, 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 Defendants required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendants 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 Defendants 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 Defendants 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.*, Defendants failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendants 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 Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants 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. Defendants fail 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 Defendants, 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 Defendants, 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 Defendants 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 Defendants 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