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

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

9
10 SHARRON HARVILLE and TERRELL
11 CLARK, on behalf of the State of
California, as a private attorneys general,

12
13 Plaintiffs,

14 vs.

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

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

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204, 210, 221,
222.5, 226, 226.3 226.7, 351, 510, 512,
558, 1174, 1194, 1194.1, 1194.2, 1197,
1197.1, 1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiffs Sharron Harville and Terrell Clark (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as a private attorneys general
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants North FV LLC, FRC North
8 One Paseo LLC, FRC North (Park Place) LLC, FRC North The Point LLC and North
9 Restaurants LLC (referred to as “DEFENDANT”) seeking only to recover PAGA civil
10 penalties for themselves, and on behalf of all current and former aggrieved employees that
11 worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything other than**
12 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

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

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

24 **THE PARTIES**

25 4. Defendants North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
26 LLC, FRC North The Point LLC and North Restaurants LLC are limited liability companies that
27 at all relevant times mentioned herein conducted and continue to conduct substantial business
28

1 in the state of California.

2 5. As evidenced by PLAINTIFFS' paychecks and company documents, Defendants
3 North FV LLC, FRC North One Paseo LLC, FRC North (Park Place) LLC, FRC North The
4 Point LLC and North Restaurants LLC were joint employers of PLAINTIFFS and are referred
5 to herein as ("DEFENDANT").

6 6. DEFENDANT is an Italian food eatery chain.

7 7. PLAINTIFFS allege there has existed a unity of interest and ownership between
8 Defendants described in paragraph #4 herein such that any individuality and separateness
9 between the entities has ceased. North FV LLC, FRC North One Paseo LLC, FRC North (Park
10 Place) LLC, FRC North The Point LLC and North Restaurants LLC, and DOES 1-50 are
11 therefore alter egos of each other. Adherence to the fiction of the separate existence of these
12 Defendants would permit an abuse of the corporate privilege, and would promote injustice by
13 protecting these Defendants from liability for the wrongful acts committed by them under the
14 name North Italia.

15 8. PLAINTIFFS further allege that North FV LLC, FRC North One Paseo LLC,
16 FRC North (Park Place) LLC, FRC North The Point LLC and North Restaurants LLC are the
17 alter egos of each other for the following reasons:

- 18 (A) On the California Secretary of State's website
19 (<https://businesssearch.sos.ca.gov/>) North FV LLC, FRC North One Paseo
20 LLC, FRC North (Park Place) LLC, FRC North The Point LLC and North
21 Restaurants LLC have the same entity address and/or mailing address;
22 (B) On information and belief North FV LLC, FRC North One Paseo LLC,
23 FRC North (Park Place) LLC, FRC North The Point LLC and North
24 Restaurants LLC utilize the same standardized employment forms and
25 issue the same employment policies; and,
26 (C) North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
27 LLC, FRC North The Point LLC and North Restaurants LLC share the
28 same agent for service of process, United States Corporation Company.

1 9. Plaintiff Harville was employed by DEFENDANT in California from October of
2 2018 to February of 2020. Plaintiff Harville was entitled to the legally required meal and rest
3 periods and payment of minimum and overtime wages due for all time worked.

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

7 11. PLAINTIFFS, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by Defendants North FV
11 LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North
12 The Point LLC and/or North Restaurants LLC, in California and classified as non-exempt
13 employees ("AGGRIEVED EMPLOYEES") at any time during the time period starting
14 November 1, 2019 and continuing through February 21, 2023 (the "PAGA PERIOD").

15 12. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
16 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
17 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
18 DEFENDANT's violation of California Labor Code §§201, 202, 203, 204, 210, 221, 222.5,
19 226, 226.3 226.7, 351, 510, 512, 558, 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802,
20 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code
21 of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable
22 Industrial Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED
23 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

24 13. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
26 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
27 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
28 to allege the true names and capacities of Does 1 through 50, inclusive, when they are

1 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
2 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
3 inclusive, are responsible in some manner for one or more of the events and happenings that
4 proximately caused the injuries and damages hereinafter alleged.

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

13 14 **THE CONDUCT**

15 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
16 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
17 meaning the time during which an employee is subject to the control of an employer, including
18 all the time the employee is suffered or permitted to work. DEFENDANT required
19 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
20 time they were under DEFENDANT's control. Specifically, DEFENDANT required
21 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
22 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while
23 clocked out for what should have been PLAINTIFFS' off-duty meal break. As a result, the
24 PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
25 compensation by working without their time being accurately recorded and without
26 compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and
27 practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked is
28 evidenced by DEFENDANT's business records.

1 16. In addition, state and federal law provides that employees must be paid overtime
2 at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and the AGGRIEVED
3 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
4 elements of an employee’s performance.

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

19 18. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
20 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
21 and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
23 for more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANT from time to time failed to provide PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
26 were required by DEFENDANT to work ten (10) hours of work from time to time.
27 PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
28 additional compensation and in accordance with DEFENDANT’s strict corporate policy and

1 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
2 production levels for each employee at the busy work sites they provided services for.

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

25 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify the
26 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of
28 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

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

7 21. In the course of their employment PLAINTIFFS and the AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit.
12 Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by
13 DEFENDANT to use their personal cell phones for work related issues, including downloading
14 an application on their personal cell phone for scheduling purposes called "hot schedules." As
15 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
17 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
18 for the benefit of DEFENDANT.

19 22. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
20 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
21 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
22 provides that every employer shall furnish each of his or her employees with an accurate
23 itemized wage statement in writing showing, among other things, gross wages earned and all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
26 identify the correct rates of pay and number of hours worked, including for the "Hourly OT"
27 and "Hourly Regular" items of pay, which were wage payments. Aside from the violations
28 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage

1 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
2 DEFENDANT from time to time provided PLAINTIFFS and the other AGGRIEVED
3 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

13 24. In violation of the applicable sections of the California Labor Code and the
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
16 and systematically failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES
17 suitable seating when the nature of these employees' work reasonably permitted sitting.

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

23 26. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
24 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order
25 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on behalf
26 of PLAINTIFFS and other AGGRIEVED EMPLOYEES as provided herein. Providing
27 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
28 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor

1 Code and regulations promulgated thereunder as herein alleged.

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

10 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 systematically, engaged in a practice whereby DEFENDANT failed to correctly calculate
14 compensation for the time worked by PLAINTIFFS and the AGGRIEVED EMPLOYEES and
15 reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit
16 of this work, required employees to perform this work and permitted or suffered to permit this
17 work.

18 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 systematically, engaged in a practice whereby, as to PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES, DEFENDANT failed to provide the legally mandated meal and rest periods,
23 failed to provide the required amount of compensation for missed meal and rest periods, failed
24 to provide overtime or double time wages, failed to provide minimum wages, failed to provide
25 reporting time pay, failed to provide split-shift pay, unlawfully deducted and/or withheld wages,
26 failed to provide suitable seating, failed to include bonuses into the regular rate, failed to timely
27 pay wages during employment, failed to timely pay wages at separation, failed to pay wages for
28 off the clock work, failed to reimburse for all necessary business expenses incurred, failed to

1 provide accurate wage statements, and failed to preserve all employee payroll records.

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

7
8 **JURISDICTION AND VENUE**

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

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

17
18 **FIRST CAUSE OF ACTION**

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

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

21 **(By PLAINTIFFS and Against All Defendants)**

22 33. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 34. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 35. PLAINTIFFS, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by Defendants North FV
11 LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North
12 The Point LLC and/or North Restaurants LLC, in California and classified as non-exempt
13 employees ("AGGRIEVED EMPLOYEES") at any time during the time period starting
14 November 1, 2019 and continuing through February 21, 2023 (the "PAGA PERIOD").

15 36. On May 7, 2020, Plaintiff Harville gave written notice by electronic mail to the
16 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
17 employer of the specific provisions of this code alleged to have been violated as required by
18 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
19 herein. On January 7, 2021, Plaintiff Clark gave written notice by electronic mail to the
20 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
21 employer of the specific provisions of this code alleged to have been violated as required by
22 Labor Code § 2699.3 See **Exhibit #2**, attached hereto and incorporated by this reference
23 herein. On April 24, 2023, PLAINTIFFS gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3 See **Exhibit #3**, attached hereto and incorporated by this reference
27 herein. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint
28 has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a

1 representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of
2 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 37. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods and failed to provide the required amount
7 of compensation for missed meal and rest periods, (c) failed to pay overtime or double time
8 wages, (d) failed to pay minimum wages, (e) failed to provide wages when due, (f) failed to
9 reimburse employees for required expenses, (g) failed to provide suitable seating, (h) failed to
10 provide reporting time pay, (i) failed to provide split-shift pay, (j) failed to include bonuses into
11 the regular rate, (k) unlawfully deducted and/or withheld wages, and (l) failed to preserve all
12 employee payroll records, all in violation of the applicable Labor Code sections listed in Labor
13 Code Sections §§201, 202, 203, 204, 210, 221, 222.5, 226, 226.3 226.7, 351, 510, 512, 558,
14 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
15 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
16 1070(14) (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby
17 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of
18 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
19 the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
20 and the other AGGRIEVED EMPLOYEES.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
23 severally, as follows:

- 24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26
27
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

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

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

5
6 Dated: July 27, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
7 LLP

8 By: /s/ Nicholas De Blouw

9 Norman B. Blumenthal
10 Kyle R. Nordrehaug
11 Nicholas J. De Blouw

12 *Attorneys for Plaintiffs*
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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

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

9
10 SHARRON HARVILLE an individual, on
11 behalf of herself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 NORTH FV LLC, a Limited Liability
16 Company; FRC NORTH ONE PASEO
17 LLC; a Limited Liability Company; FRC
18 NORTH (PARK PLACE) LLC, a Limited
19 Liability Company; FRC NORTH THE
20 POINT LLC, a Limited Liability Company;
21 and DOES 1 through 50, inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

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

13 3. DEFENDANT is an Italian food eatery chain.

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

21 5. PLAINTIFF further alleges that North FV LLC, FRC North One Paseo LLC, FRC
22 North (Park Place) LLC and FRC North The Point LLC are the alter egos of each other for the
23 following reasons:

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

28 (B) On information and belief North FV LLC, FRC North One Paseo LLC, FRC

1 North (Park Place) LLC and FRC North The Point LLC utilize the same
2 standardized employment forms and issue the same employment policies;
3 and,

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

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

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

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeited minimum wage and overtime compensation by working without their time
2 being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
5 records.

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

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

23 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
24 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
25 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
26 CLASS Members were required from time to time to perform work as ordered by DEFENDANT
27 for more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS

1 Members with a second off-duty meal period for some workdays in which these employees were
2 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
3 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice.
5 DEFENDANT failed to maintain adequate staffing levels while increasing the production levels
6 for each employee at the busy work sites they provided services for.

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

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

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

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
26 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate itemized
28 wage statement in writing showing, among other things, gross wages earned and all applicable

1 hourly rates in effect during the pay period and the corresponding amount of time worked at each
2 hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct
3 rates of pay and number of hours worked, including for the “Hourly OT” and “Hourly Regular”
4 items of pay, which were wage payments. Aside from the violations listed above in this
5 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all
6 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
7 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
8 statements which violated Cal. Lab. Code § 226.

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

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

28 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally

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

12 13 **JURISDICTION AND VENUE**

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

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

24 **THE CALIFORNIA CLASS**

25 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
28

1 individuals who are or previously were employed by North FV LLC and/or FRC North One Paseo
2 LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC in California and
3 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
4 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
5 by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the
6 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

25 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
26 Members is impracticable.

27 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
3 deceptively having in place company policies, practices and procedures that
4 uniformly and systematically failed to record and pay PLAINTIFF and the
5 other members of the CALIFORNIA CLASS for all time worked, including
6 minimum wages owed and overtime wages owed for work performed by
7 these employees; and,
- 8 (b) Committing an act of unfair competition in violation of the UCL, by failing
9 to provide the PLAINTIFF and the other members of the CALIFORNIA
10 CLASS with the legally required meal and rest periods; and,
- 11 (c) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
13 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS members with necessary expenses incurred in the
15 discharge of their job duties.

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

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

1 meal and rest periods to the CALIFORNIA CLASS and thereby
2 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and,

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

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

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

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

1 their interests.

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

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

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

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

28 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 CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA 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 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.

32. 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 uniform and systematically applied with respect to the CALIFORNIA

1 CLASS;

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

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

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

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

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

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

25 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
26 the business records of DEFENDANT; 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 related

claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

34. PLAINTIFF 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).

35. 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 PLAINTIFF 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 uniformly 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

1 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

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

8 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
28 all wages due for overtime worked, for which DEFENDANT is liable

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

23 40. This Class Action meets the statutory prerequisites for the maintenance of a Class

24 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28 separate actions by individual members of the CALIFORNIA LABOR SUB-

1 CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

28 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-

1 CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

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

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

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

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

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

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

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be 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.

Cal. Bus. & Prof. Code § 17203.

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable

1 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
3 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
4 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
5 competition, including restitution of wages wrongfully withheld.

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

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

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

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

28 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each

1 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
2 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
3 each workday in which a second off-duty meal period was not timely provided for each ten (10)
4 hours of work.

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

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

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

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

24 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
26 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging
27 in any unlawful and unfair business practices in the future.

28 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,

1 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
2 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
3 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
4 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
5 and economic harm unless DEFENDANT is restrained from continuing to engage in these
6 unlawful and unfair business practices.

7
8 **SECOND CAUSE OF ACTION**

9 **For Failure To Pay Minimum Wages**

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

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

12 **and Against All Defendants)**

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

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

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

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

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

27 63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount

1 of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

24 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
26 DEFENDANT and were not paid for all the time they worked, including overtime work.

27 78. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that failed to accurately record overtime worked
2 by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
3 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 for overtime worked, including, the overtime work performed in excess of eight (8) hours in a
5 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

1 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 were required to work, and did in fact work, overtime as to which DEFENDANT failed to
3 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
4 employees.

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

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

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

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

1 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
2 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
3 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
4 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
5 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was
6 willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR
7 SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
18 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-
21 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for
22 the legally required off-duty meal periods. As a result of their rigorous work schedules,
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not
24 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
25 failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally
26 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
27 business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
28 Members with a second off-duty meal period in some workdays in which these employees were

1 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
2 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
3 additional compensation and in accordance with DEFENDANT's strict corporate policy and
4 practice.

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

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

13 14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their
2 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
3 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
4 managers.

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

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

13
14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

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

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

26 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
27 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
28

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

26 99. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
27 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
28 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the

1 statutory rate and costs under Cal. Lab. Code § 2802.

2
3 **SEVENTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

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

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

11 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
12 an “accurate itemized” statement in writing showing:

13 (1) gross wages earned,

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

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

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

21 (5) net wages earned,

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

23 (7) the name of the employee and his or her social security number, except that by January
24 1, 2008, only the last four digits of his or her social security number or an employee
25 identification number other than a social security number may be shown on the itemized
26 statement,

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

28 (9) all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee.

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

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

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EIGHTH CAUSE OF ACTION
For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

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

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

As used in this article:

- (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

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

109. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is

1 commenced; but the wages shall not continue for more than 30 days.

2 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
3 Members has terminated and DEFENDANT has not tendered payment of wages, to these
4 employees, as required by law.

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

11
12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
28

Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

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

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

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

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

3. On all claims:

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

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

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

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Dated: May 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: May 7, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

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WRITERS E-MAIL:

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WRITERS EXT:

1004

January 7, 2021

CA2104

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANTS

Labor and Workforce Development Agency
Online Filing

North FV LLC
FRC North The Point LLC
FRC North (Park Place) LLC
FRC North One Paseo LLC
Certified Mail #70200640000074883825
United States Corporation Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Amended Notice For LWDA, Case No. LWDA-CM-785902-20

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:

Our offices represent Plaintiffs Sharron Harville and Terrell Clark (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against 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 Harville originally sent a PAGA Notice on May 7, 2020 which gave notice to the LWDA and Defendants to enable Plaintiff Harville to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to amend Plaintiff Harville’s original PAGA Notice and to add an additional Plaintiff and Aggrieved Employee Terrell Clark.

“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. Plaintiff Harville 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. Plaintiff Clark has been employed by Defendants in California since September of 2018 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendants required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Defendants failed to identify the correct rates of pay and number of hours worked, including for the "Hourly Regular" and "Hourly OT" items of pay, which were wage payments. Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.* 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 Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Attorneys for Plaintiffs

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

the same entity address and/or mailing address;

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

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

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

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

8. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined as all individuals 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 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

9. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby 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

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

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

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

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

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

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

27 1) With respect to the First Cause of Action, the final relief on behalf
28 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 ///

25 ///

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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.*

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

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

124. As a result of DEFENDANT's conduct, 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.

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

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

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

127. Plaintiff Clark is a current employee of DEFENDANT.

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

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

130. Plaintiff Clark's race as an African American was a substantial motivating reason(s) for the adverse employment actions, including denial of job promotion and/or 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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Dated: January 5, 2021

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 E-MAIL:

Nick@bamlawca.com

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

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EXHIBIT 3

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS EXT:
1004**

**April 24, 2023
CA2104**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANTS

**Labor and Workforce Development Agency
Online Filing**

North FV LLC

Certified Mail # 7022 3330 0001 8186 4293

FRC North The Point LLC

Certified Mail # 7022 3330 0001 8186 4293

FRC North One Paseo LLC

Certified Mail # 7022 3330 0001 8186 4293

FRC North (Park Place) LLC

Certified Mail # 7022 3330 0001 8186 4293

North Restaurants LLC

Certified Mail # 7022 3330 0001 8186 4293

**Kimberly M. Talley, Esq.
CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP
2029 Century Park East, Ste 1100
Los Angeles, CA 90067**

Second Amended Notice For LWDA, Case No. LWDA-CM-785902-20

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 221, 222.5, 226, 226.3 226.7, 351, 510, 512, 558, 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Sharron Harville and Terrell Clark (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against 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”).

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Plaintiff Harville originally sent a PAGA Notice on May 7, 2020 which gave notice to the LWDA and Defendants to enable Plaintiff Harville to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.*

Plaintiff Harville sent an Amended Notice on January 7, 2021 which amended Plaintiff Harville's original PAGA Notice and added an additional Plaintiff and Aggrieved Employee Terrell Clark.

This Second Amended Notice is intended to amend Plaintiff Harville and Plaintiff Clark's Amended PAGA Notice and to add an additional Defendant, North Restaurants LLC. Hereinafter "Defendants" shall include North Restaurants LLC, North FV LLC, FRC North One Paseo LLC, FRC North (Park Place) LLC and FRC North The Point LLC.

"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 and/or North Restaurants LLC, in California and classified as non-exempt employees at any time during the time period starting November 1, 2019 and continuing through February 21, 2023.

Plaintiff Harville 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. Plaintiff Clark has been employed by Defendants in California since September of 2018 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendants required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Defendants failed to identify the correct rates of

pay and number of hours worked, including for the “Hourly Regular” and “Hourly OT” items of pay, which were wage payments. Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Additionally, as to Plaintiffs and other Aggrieved Employees, Defendants unlawfully deducted and/or withheld wages, failed to include bonuses into the regular rate, failed to provide split-shift pay, failed to preserve all employee payroll records, and failed to reimburse employees for business expenses for personal devices, including but not limited to, personal cell phone usage. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204, 210, 221, 222.5, 226, 226.3 226.7, 351, 510, 512, 558, 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the First Amended Representative Action Complaint by Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs to proceed with the First Amended Representative Action Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Amended Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiffs

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

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

9
10 SHARRON HARVILLE and TERRELL
11 CLARK, on behalf of the State of
California, as a private attorneys general,

12
13 Plaintiffs,

14 vs.

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

19
20 Defendants.
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Case No. 37-2021-000397-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204, 210, 221,
222.5, 226, 226.3 226.7, 351, 510, 512,
558, 1174, 1194, 1194.1, 1194.2, 1197,
1197.1, 1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiffs Sharron Harville and Terrell Clark (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as a private attorneys general
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants North FV LLC, FRC North
8 One Paseo LLC, FRC North (Park Place) LLC, FRC North The Point LLC and North
9 Restaurants LLC (referred to as “DEFENDANT”) seeking only to recover PAGA civil
10 penalties for themselves, and on behalf of all current and former aggrieved employees that
11 worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything other than**
12 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

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

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

24 **THE PARTIES**

25 4. Defendants North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
26 LLC, FRC North The Point LLC and North Restaurants LLC are limited liability companies that
27 at all relevant times mentioned herein conducted and continue to conduct substantial business
28

1 in the state of California.

2 5. As evidenced by PLAINTIFFS' paychecks and company documents, Defendants
3 North FV LLC, FRC North One Paseo LLC, FRC North (Park Place) LLC, FRC North The
4 Point LLC and North Restaurants LLC were joint employers of PLAINTIFFS and are referred
5 to herein as ("DEFENDANT").

6 6. DEFENDANT is an Italian food eatery chain.

7 7. PLAINTIFFS allege there has existed a unity of interest and ownership between
8 Defendants described in paragraph #4 herein such that any individuality and separateness
9 between the entities has ceased. North FV LLC, FRC North One Paseo LLC, FRC North (Park
10 Place) LLC, FRC North The Point LLC and North Restaurants LLC, and DOES 1-50 are
11 therefore alter egos of each other. Adherence to the fiction of the separate existence of these
12 Defendants would permit an abuse of the corporate privilege, and would promote injustice by
13 protecting these Defendants from liability for the wrongful acts committed by them under the
14 name North Italia.

15 8. PLAINTIFFS further allege that North FV LLC, FRC North One Paseo LLC,
16 FRC North (Park Place) LLC, FRC North The Point LLC and North Restaurants LLC are the
17 alter egos of each other for the following reasons:

18 (A) On the California Secretary of State's website
19 (<https://businesssearch.sos.ca.gov/>) North FV LLC, FRC North One Paseo
20 LLC, FRC North (Park Place) LLC, FRC North The Point LLC and North
21 Restaurants LLC have the same entity address and/or mailing address;

22 (B) On information and belief North FV LLC, FRC North One Paseo LLC,
23 FRC North (Park Place) LLC, FRC North The Point LLC and North
24 Restaurants LLC utilize the same standardized employment forms and
25 issue the same employment policies; and,

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

1 9. Plaintiff Harville was employed by DEFENDANT in California from October of
2 2018 to February of 2020. Plaintiff Harville was entitled to the legally required meal and rest
3 periods and payment of minimum and overtime wages due for all time worked.

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

7 11. PLAINTIFFS, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by Defendants North FV
11 LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North
12 The Point LLC and/or North Restaurants LLC, in California and classified as non-exempt
13 employees ("AGGRIEVED EMPLOYEES") at any time during the time period starting
14 November 1, 2019 and continuing through February 21, 2023 (the "PAGA PERIOD").

15 12. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
16 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
17 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
18 DEFENDANT's violation of California Labor Code §§201, 202, 203, 204, 210, 221, 222.5,
19 226, 226.3 226.7, 351, 510, 512, 558, 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802,
20 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code
21 of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable
22 Industrial Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED
23 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

24 13. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
26 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
27 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
28 to allege the true names and capacities of Does 1 through 50, inclusive, when they are

1 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
2 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
3 inclusive, are responsible in some manner for one or more of the events and happenings that
4 proximately caused the injuries and damages hereinafter alleged.

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

13 14 **THE CONDUCT**

15 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
16 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
17 meaning the time during which an employee is subject to the control of an employer, including
18 all the time the employee is suffered or permitted to work. DEFENDANT required
19 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
20 time they were under DEFENDANT's control. Specifically, DEFENDANT required
21 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
22 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while
23 clocked out for what should have been PLAINTIFFS' off-duty meal break. As a result, the
24 PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
25 compensation by working without their time being accurately recorded and without
26 compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and
27 practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked is
28 evidenced by DEFENDANT's business records.

1 16. In addition, state and federal law provides that employees must be paid overtime
2 at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and the AGGRIEVED
3 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
4 elements of an employee’s performance.

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

19 18. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
20 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
21 and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
23 for more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANT from time to time failed to provide PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
26 were required by DEFENDANT to work ten (10) hours of work from time to time.
27 PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
28 additional compensation and in accordance with DEFENDANT’s strict corporate policy and

1 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
2 production levels for each employee at the busy work sites they provided services for.

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

25 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify the
26 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of
28 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

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

7 21. In the course of their employment PLAINTIFFS and the AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit.
12 Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by
13 DEFENDANT to use their personal cell phones for work related issues, including downloading
14 an application on their personal cell phone for scheduling purposes called "hot schedules." As
15 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
17 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
18 for the benefit of DEFENDANT.

19 22. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
20 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
21 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
22 provides that every employer shall furnish each of his or her employees with an accurate
23 itemized wage statement in writing showing, among other things, gross wages earned and all
24 applicable hourly rates in effect during the pay period and the corresponding amount of time
25 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
26 identify the correct rates of pay and number of hours worked, including for the "Hourly OT"
27 and "Hourly Regular" items of pay, which were wage payments. Aside from the violations
28 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage

1 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
2 DEFENDANT from time to time provided PLAINTIFFS and the other AGGRIEVED
3 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

13 24. In violation of the applicable sections of the California Labor Code and the
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
16 and systematically failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES
17 suitable seating when the nature of these employees' work reasonably permitted sitting.

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

23 26. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
24 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order
25 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on behalf
26 of PLAINTIFFS and other AGGRIEVED EMPLOYEES as provided herein. Providing
27 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
28 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor

1 Code and regulations promulgated thereunder as herein alleged.

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

10 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
11 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 systematically, engaged in a practice whereby DEFENDANT failed to correctly calculate
14 compensation for the time worked by PLAINTIFFS and the AGGRIEVED EMPLOYEES and
15 reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit
16 of this work, required employees to perform this work and permitted or suffered to permit this
17 work.

18 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 systematically, engaged in a practice whereby, as to PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES, DEFENDANT failed to provide the legally mandated meal and rest periods,
23 failed to provide the required amount of compensation for missed meal and rest periods, failed
24 to provide overtime or double time wages, failed to provide minimum wages, failed to provide
25 reporting time pay, failed to provide split-shift pay, unlawfully deducted and/or withheld wages,
26 failed to provide suitable seating, failed to include bonuses into the regular rate, failed to timely
27 pay wages during employment, failed to timely pay wages at separation, failed to pay wages for
28 off the clock work, failed to reimburse for all necessary business expenses incurred, failed to

1 provide accurate wage statements, and failed to preserve all employee payroll records.

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

7
8 **JURISDICTION AND VENUE**

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

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

17
18 **FIRST CAUSE OF ACTION**

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

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

21 **(By PLAINTIFFS and Against All Defendants)**

22 33. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 34. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 35. PLAINTIFFS, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by Defendants North FV
11 LLC and/or FRC North One Paseo LLC and/or FRC North (Park Place) LLC and/or FRC North
12 The Point LLC and/or North Restaurants LLC, in California and classified as non-exempt
13 employees ("AGGRIEVED EMPLOYEES") at any time during the time period starting
14 November 1, 2019 and continuing through February 21, 2023 (the "PAGA PERIOD").

15 36. On May 7, 2020, Plaintiff Harville gave written notice by electronic mail to the
16 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
17 employer of the specific provisions of this code alleged to have been violated as required by
18 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
19 herein. On January 7, 2021, Plaintiff Clark gave written notice by electronic mail to the
20 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
21 employer of the specific provisions of this code alleged to have been violated as required by
22 Labor Code § 2699.3 See **Exhibit #2**, attached hereto and incorporated by this reference
23 herein. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint
24 has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a
25 representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of
26 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

27 37. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other

1 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
2 and provide legally required meal and rest periods and failed to provide the required amount
3 of compensation for missed meal and rest periods, (c) failed to pay overtime or double time
4 wages, (d) failed to pay minimum wages, (e) failed to provide wages when due, (f) failed to
5 reimburse employees for required expenses, (g) failed to provide suitable seating, (h) failed to
6 provide reporting time pay, (i) failed to provide split-shift pay, (j) failed to include bonuses into
7 the regular rate, (k) unlawfully deducted and/or withheld wages, and (l) failed to preserve all
8 employee payroll records, all in violation of the applicable Labor Code sections listed in Labor
9 Code Sections §§201, 202, 203, 204, 210, 221, 222.5, 226, 226.3 226.7, 351, 510, 512, 558,
10 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
11 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
12 1070(14) (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby
13 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of
14 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
15 the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
16 and the other AGGRIEVED EMPLOYEES.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
19 severally, as follows:

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

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

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

26
27
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

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Dated: April __, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: _____
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
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 E-MAIL:

Nick@bamlawca.com

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 Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

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6 Attorneys for Plaintiff

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

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

9
10 SHARRON HARVILLE an individual, on
11 behalf of herself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 NORTH FV LLC, a Limited Liability
16 Company; FRC NORTH ONE PASEO
17 LLC; a Limited Liability Company; FRC
18 NORTH (PARK PLACE) LLC, a Limited
19 Liability Company; FRC NORTH THE
20 POINT LLC, a Limited Liability Company;
21 and DOES 1 through 50, inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

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

13 3. DEFENDANT is an Italian food eatery chain.

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

21 5. PLAINTIFF further alleges that North FV LLC, FRC North One Paseo LLC, FRC
22 North (Park Place) LLC and FRC North The Point LLC are the alter egos of each other for the
23 following reasons:

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

28 (B) On information and belief North FV LLC, FRC North One Paseo LLC, FRC

1 North (Park Place) LLC and FRC North The Point LLC utilize the same
2 standardized employment forms and issue the same employment policies;
3 and,

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

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

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

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeited minimum wage and overtime compensation by working without their time
2 being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
5 records.

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

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

23 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
24 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
25 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
26 CLASS Members were required from time to time to perform work as ordered by DEFENDANT
27 for more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS

1 Members with a second off-duty meal period for some workdays in which these employees were
2 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
3 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANT's strict corporate policy and practice.
5 DEFENDANT failed to maintain adequate staffing levels while increasing the production levels
6 for each employee at the busy work sites they provided services for.

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

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

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

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
26 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate itemized
28 wage statement in writing showing, among other things, gross wages earned and all applicable

1 hourly rates in effect during the pay period and the corresponding amount of time worked at each
2 hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct
3 rates of pay and number of hours worked, including for the “Hourly OT” and “Hourly Regular”
4 items of pay, which were wage payments. Aside from the violations listed above in this
5 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all
6 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
7 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
8 statements which violated Cal. Lab. Code § 226.

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

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

28 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally

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

12 13 **JURISDICTION AND VENUE**

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

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

24 **THE CALIFORNIA CLASS**

25 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
27 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
28

1 individuals who are or previously were employed by North FV LLC and/or FRC North One Paseo
2 LLC and/or FRC North (Park Place) LLC and/or FRC North The Point LLC in California and
3 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
4 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
5 by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the
6 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

25 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
26 Members is impracticable.

27 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
28 California law by:

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
3 deceptively having in place company policies, practices and procedures that
4 uniformly and systematically failed to record and pay PLAINTIFF and the
5 other members of the CALIFORNIA CLASS for all time worked, including
6 minimum wages owed and overtime wages owed for work performed by
7 these employees; and,
- 8 (b) Committing an act of unfair competition in violation of the UCL, by failing
9 to provide the PLAINTIFF and the other members of the CALIFORNIA
10 CLASS with the legally required meal and rest periods; and,
- 11 (c) Committing an act of unfair competition in violation of the California
12 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
13 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
14 CALIFORNIA CLASS members with necessary expenses incurred in the
15 discharge of their job duties.

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

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

1 meal and rest periods to the CALIFORNIA CLASS and thereby
2 systematically underpaid compensation to PLAINTIFF and CALIFORNIA
3 CLASS. PLAINTIFF sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFF and the members of
5 the CALIFORNIA CLASS were and are similarly or identically harmed by
6 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
7 engaged in by DEFENDANT; and,

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

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

- 17 (a) Without class certification and determination of declaratory, injunctive,
18 statutory and other legal questions within the class format, prosecution of
19 separate actions by individual members of the CALIFORNIA CLASS will
20 create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA CLASS which would establish
23 incompatible standards of conduct for the parties opposing the
24 CALIFORNIA CLASS; and/or,
- 25 2) Adjudication with respect to individual members of the
26 CALIFORNIA CLASS which would as a practical matter be
27 dispositive of interests of the other members not party to the
28 adjudication or substantially impair or impede their ability to protect

1 their interests.

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

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

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

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

28 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 CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA 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 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.

32. 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 uniform and systematically applied with respect to the CALIFORNIA

1 CLASS;

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

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

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

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

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

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

25 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
26 the business records of DEFENDANT; 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 related

claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

34. PLAINTIFF 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).

35. 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 PLAINTIFF 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 uniformly 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

1 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

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

8 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
28 all wages due for overtime worked, for which DEFENDANT is liable

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

23 40. This Class Action meets the statutory prerequisites for the maintenance of a Class

24 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28 separate actions by individual members of the CALIFORNIA LABOR SUB-

1 CLASS will create the risk of:

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

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

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

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

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

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

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

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

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

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

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

28 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-

1 CLASS predominate over any question affecting only individual
2 CALIFORNIA LABOR SUB-CLASS Members;

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

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

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

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

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

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

27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The

CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be 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.

Cal. Bus. & Prof. Code § 17203.

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable

1 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
3 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
4 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
5 competition, including restitution of wages wrongfully withheld.

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

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

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

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

28 51. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each

1 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
2 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
3 each workday in which a second off-duty meal period was not timely provided for each ten (10)
4 hours of work.

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

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

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

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

24 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
26 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging
27 in any unlawful and unfair business practices in the future.

28 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,

1 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
2 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
3 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
4 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
5 and economic harm unless DEFENDANT is restrained from continuing to engage in these
6 unlawful and unfair business practices.

7
8 **SECOND CAUSE OF ACTION**

9 **For Failure To Pay Minimum Wages**

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

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

12 **and Against All Defendants)**

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

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

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

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

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

27 63. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount

1 of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

24 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
26 DEFENDANT and were not paid for all the time they worked, including overtime work.

27 78. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result

1 of implementing a uniform policy and practice that failed to accurately record overtime worked
2 by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
3 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 for overtime worked, including, the overtime work performed in excess of eight (8) hours in a
5 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

1 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 were required to work, and did in fact work, overtime as to which DEFENDANT failed to
3 accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
4 employees.

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

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

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

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

1 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
2 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
3 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
4 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
5 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was
6 willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR
7 SUB-CLASS Members are entitled to seek and recover statutory costs.

8
9 **FOURTH CAUSE OF ACTION**

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

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

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

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

17 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed
18 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
19 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
20 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-
21 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for
22 the legally required off-duty meal periods. As a result of their rigorous work schedules,
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not
24 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
25 failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally
26 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
27 business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
28 Members with a second off-duty meal period in some workdays in which these employees were

1 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
2 members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without
3 additional compensation and in accordance with DEFENDANT's strict corporate policy and
4 practice.

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

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

13
14 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their
2 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
3 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
4 managers.

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

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

13
14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 2802]**

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

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

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

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

26 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
27 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
28

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

26 99. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
27 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
28 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the

1 statutory rate and costs under Cal. Lab. Code § 2802.

2
3 **SEVENTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 226]**

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

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

11 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
12 an “accurate itemized” statement in writing showing:

13 (1) gross wages earned,

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

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

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

21 (5) net wages earned,

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

23 (7) the name of the employee and his or her social security number, except that by January
24 1, 2008, only the last four digits of his or her social security number or an employee
25 identification number other than a social security number may be shown on the itemized
26 statement,

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

28 (9) all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee.

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

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

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EIGHTH CAUSE OF ACTION
For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

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

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

As used in this article:

- (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

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

109. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is

1 commenced; but the wages shall not continue for more than 30 days.

2 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
3 Members has terminated and DEFENDANT has not tendered payment of wages, to these
4 employees, as required by law.

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

11
12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

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

- 27 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
28

Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

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

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

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

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

3. On all claims:

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

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

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

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Dated: May 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: May 7, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS EXT:
1004**

January 7, 2021
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 #70200640000074883825
	United States Corporation Company
	2710 Gateway Oaks Drive, Suite 150N
	Sacramento, CA 95833

Amended Notice For LWDA, Case No. LWDA-CM-785902-20

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:

Our offices represent Plaintiffs Sharron Harville and Terrell Clark (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against 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 Harville originally sent a PAGA Notice on May 7, 2020 which gave notice to the LWDA and Defendants to enable Plaintiff Harville to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to amend Plaintiff Harville’s original PAGA Notice and to add an additional Plaintiff and Aggrieved Employee Terrell Clark.

“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. Plaintiff Harville 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. Plaintiff Clark has been employed by Defendants in California since September of 2018 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendants required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Defendants failed to identify the correct rates of pay and number of hours worked, including for the "Hourly Regular" and "Hourly OT" items of pay, which were wage payments. Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.* 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 Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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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

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

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

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

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

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

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

27 1) With respect to the First Cause of Action, the final relief on behalf
28 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 ///

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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 E-MAIL:

Nick@bamlawca.com

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