

NO SUMMONS ISSUED

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

SEP 03 2020

CLERK OF THE COURT
ANGELICA SUNGA

BY: Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CGC-20-586542

ISHAN BASU-KESSELMAN, on behalf of
the State of California, as a private attorney
general,

Plaintiff,

vs.

GARUDA LABS, INC.; a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

REPRESENTATIVE ACTION COMPLAINT
FOR:

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
226.7, 351, 510, 512, 558(a)(1)(2), 1194,
1197, 1197.1, 1198, 2802, California Code
of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), and the applicable
Wage Order(s).

BY FAX

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

6 7 INTRODUCTION

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

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

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

23 4. Defendant Garuda Labs, Inc., known to the general public as "Instawork",
24 ("DEFENDANT") in order to service customers hires workers to aid DEFENDANT in
25 providing manual labor services to their clients. The cost, as proscribed by law, of the
26 personnel hired to work for DEFENDANT, includes not only the pay of these employees but
27 the cost of the employer's share of tax payments to the federal and state governments for income
28 taxes, social security taxes, medicare insurance, unemployment insurance and payments for

1 workers' compensation insurance. To avoid the payment of these legally proscribed expenses
2 to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the
3 payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and
4 other employees. As employer, DEFENDANT is legally responsible for the payment of all
5 these expenses.

6 7 **THE PARTIES**

8 5. DEFENDANT at all relevant times mentioned herein conducted and continues
9 to conduct substantial and regular business in the State of California.

10 6. DEFENDANT is a startup that connects gig economy workers with jobs in select
11 markets. DEFENDANT's workers are composed of independent contractors and employees.

12 7. PLAINTIFF worked for DEFENDANT as an independent contractor performing
13 "gigs" working manual labor from August of 2018 to January of 2020 and also worked for
14 DEFENDANT from January of 2020 to March of 2020 performing the same "gigs" and was
15 reclassified as an employee during this time period. During his employment with
16 DEFENDANT, PLAINTIFF accepted work "gigs" via DEFENDANT's application he was
17 required to download on his personal cell phone. These "gigs" PLAINTIFF accepted via
18 DEFENDANT's application, were jobs, including but not limited to, working as a prep cook,
19 line cook, event server and waiter at various places, such as, golf courses, hotels, restaurants,
20 sporting venues, beach events, and award ceremonies including the Emmy's.

21 8. California Labor Code Section 226.8 provides that "[i]t is unlawful for any person
22 or employer to engage in . . . [w]illful misclassification of an individual as an independent
23 contractor." The penalty for willful misclassification of employees is a "civil penalty of not less
24 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
25 each violation, in addition to any other penalties or fines permitted by law." It is further
26 provided that, in the event that an employer is found to have engaged in "a pattern or practice
27 of these violations," the penalties increase to "not less than ten thousand dollars (\$10,000) and
28 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other

1 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

2 9. Here, DEFENDANT has willfully misclassified PLAINTIFF and other workers
3 who accepted “Gigs” via Defendant’s application as described in Cal. Labor Code § 226.8, and
4 further, that DEFENDANT has engaged in a “pattern or practice” of such violations as
5 contemplated by the California Labor Code.

6 10. Upon hire, the position was represented by DEFENDANT to PLAINTIFF and the
7 other workers as an independent contractor position capable of paying an hourly rate for the
8 time they spend providing manual labor to DEFENDANT’s third party customers. PLAINTIFF
9 and other workers were not compensated overtime wages for any of their time spent working
10 in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty (40)
11 hours in a workweek. PLAINTIFF and other workers were paid the hourly rate to perform
12 labor services on DEFENDANT’s behalf. PLAINTIFF and other workers were not
13 compensated any other wages besides the non-negotiable hourly rate and they were not allowed
14 to record their time while they waited for DEFENDANT to give them work. DEFENDANT
15 did not pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the time spent driving to
16 and from jobs, and all the other time they spent working for DEFENDANT outside of the job
17 assignment they were placed at with DEFENDANT’s third party customers. The finite set of
18 tasks required to be performed by the workers is, when notified via cell phone, travel to
19 DEFENDANT’s customers to perform jobs including but not limited to, restaurant service tasks,
20 delivering goods, merchandising, custodial services, janitorial tasks, picking and packing goods
21 warehousing tasks all in accordance with DEFENDANT’s business practices and policies.

22 11. To perform their job duties, PLAINTIFF and the other workers perform work
23 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
24 complete control over the work performed and the manner and means in which the work was
25 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
26 as to how to perform their work.

27 12. California Labor Code § 3357 defines “employee” as “every person in the service
28 of an employer under any appointment or contract of hire or apprenticeship, express or implied,

1 oral or written, whether lawfully or unlawfully employed.” In addition to the California Labor
2 Code’s presumption that workers are employees, the California Supreme Court has determined
3 the most significant factor to be considered in distinguishing an independent contractor from
4 an employee is whether the *employer or principal has control or the right to control the work*
5 *both as to the work performed and the manner and means in which the work is performed.*
6 DEFENDANT heavily controlled both the work performed and the manner and means in which
7 the PLAINTIFF and the other workers performed their work in that:

8 (a) PLAINTIFF and other workers were not involved in a distinct business,
9 but instead were provided with instructions as to how to perform their work and the manner and
10 means in which the work was to be performed by means of DEFENDANT’s and
11 DEFENDANT’s customers manuals and written instructions;

12 (b) PLAINTIFF and other workers were continuously provided with training
13 and supervision, including following DEFENDANT’s company documents and received
14 training from DEFENDANT as to how and in what way to perform the services;

15 (c) DEFENDANT set the requirements as to what policies and procedures all
16 of the workers were to follow, including but not limited to, hourly rates, location of assignment,
17 where to park, and what to wear;

18 (d) PLAINTIFF and other workers had no opportunity for profit or loss
19 because DEFENDANT only paid these workers an hourly rate. DEFENDANT controlled and
20 assigned the workers which tasks were to be performed;

21 (e) PLAINTIFF and other workers performed manual labor services which are
22 part of DEFENDANT’s principal business and is closely integrated with and essential to the
23 employer's business of providing manual laborers to their customers;

24 (f) PLAINTIFF and other workers performed the work themselves and did not
25 hire others to perform their work for them;

26 (g) PLAINTIFF and other workers did not have the authority to make
27 employment-related personnel decisions;

28 (h) PLAINTIFF and other workers performed their work in a particular order

1 and sequence in accordance with DEFENDANT's and DEFENDANT's customers company
2 policies; and,

3 (i) DEFENDANT had the "right" to control every critical aspect of
4 DEFENDANT's labor operations in that DEFENDANT provided the customer, assigned where
5 the workers were to go, assigned the hourly rate, and step-by-step instructions to PLAINTIFF
6 and other workers as to the entire process of working at their assigned locations. PLAINTIFF
7 and other workers provided manual labor services ONLY for DEFENDANT's customers, which
8 DEFENDANT controlled via the company's mobile application.

9 13. As a result, stripped of all the legal fictions and artificial barriers to an honest
10 classification of the relationship between PLAINTIFF and all the other workers on the one
11 hand, and DEFENDANT on the other hand, PLAINTIFF and all the other workers are and were
12 employees of DEFENDANT and not independent contractors of DEFENDANT and should
13 therefore be properly classified as non-exempt, hourly employees.

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

21 15. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
22 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
23 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
24 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
25 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
26 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
27 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
28 the meaning of Labor Code § 2699, *et seq.*

16. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants sued here as 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 is informed and believes, and based thereon, alleges that each of the Defendants designated herein is legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants when they have been ascertained and become known.

17. 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 the PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

18. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED EMPLOYEES as defined by DEFENDANT was executed by them through the performance of non-exempt labor.

19. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES performed non-exempt labor subject to DEFENDANT's complete control over the manner and means of performance, DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business related expenses. By reason of this uniform misclassification, the AGGRIEVED EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes

1 and mandatory insurance premiums. As a result of this uniform misclassification practice,
2 policy and procedure applicable to PLAINTIFF and the other AGGRIEVED EMPLOYEES
3 who performed this work for DEFENDANT, engaged in a company-wide policy, practice and
4 procedure which failed to properly classify PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES as employees and thereby failed to pay them wages for all time worked,
6 reimbursement of business related expenses, failed to provide them with meal and rest breaks,
7 and failed to reimburse these employees for the employer's share of payroll taxes and mandatory
8 insurance. The proper classification of these employees is DEFENDANT's burden. As a result
9 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
10 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

11 20. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
13 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
15 for more than five (5) hours during some shifts without receiving a meal break. Further,
16 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
17 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
18 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
19 members of the CALIFORNIA AGGRIEVED EMPLOYEES therefore forfeited meal breaks
20 without additional compensation and in accordance with DEFENDANT's strict corporate policy
21 and practice.

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

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
2 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers.

5 22. DEFENDANT, as a matter of law, has the burden of proving that employees are
6 properly classified and that DEFENDANT otherwise complies with applicable laws.
7 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
8 AGGRIEVED EMPLOYEES as independent contractors.

9 23. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
10 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
11 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
12 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
13 meaning the time during which an employee was subject to the control of an employer,
14 including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
16 without paying them for all the time they were under DEFENDANT's control. As a result of
17 their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
18 time to time not fully relieved of duty by DEFENDANT and DEFENDANT's customers for
19 their meal periods and would clock out of DEFENDANT's timekeeping system but continue
20 to work during what should have been their off-duty meal period. PLAINTIFF and other
21 AGGRIEVED EMPLOYEES also worked more than eight hours in a workday and/or forty
22 hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as
23 DEFENDANT only paid a flat hourly rate for all time worked. Additionally, PLAINTIFF and
24 AGGRIEVED EMPLOYEES were not paid for the time they spent reviewing DEFENDANT's
25 application regarding a job that was assigned, or the requirements for the job and also for the
26 time spent responding to calls and emails from DEFENDANT and DEFENDANT's customers.
27 PLAINTIFF and the AGGRIEVED EMPLOYEES were only paid when the clocked in at
28 DEFENDANT's customers work sites to perform their manual labor. As a result, PLAINTIFF

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

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

17 25. In the course of their employment PLAINTIFF and other AGGRIEVED
18 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
19 phones and use their personal vehicles as a result of and in furtherance of their job duties as
20 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
21 cost associated with the use of the personal cellular phones and personal vehicles for
22 DEFENDANT's benefit. In order to work for DEFENDANT, PLAINTIFF and other
23 AGGRIEVED EMPLOYEES were required to use their personal vehicles to travel to different
24 locations each work shift and were also required to use DEFENDANT's mobile application and
25 as such it is mandatory to have a cell phone that is compatible with DEFENDANT's mobile
26 application. As a result, in the course of their employment with DEFENDANT PLAINTIFF
27 and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which
28 included, but were not limited to, costs related to the use of their personal cellular phones and

1 all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were also not reimbursed or indemnified by DEFENDANT for
3 the cost associated with using their personal vehicles while performing for DEFENDANT.
4 Moreover, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required from time
5 to time to pay for parking costs at certain shopping centers and delivery locations. As a result,
6 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
7 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
8 to, costs related to travel all on behalf of and for the benefit of DEFENDANT.

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

19 27. By reason of this conduct applicable to PLAINTIFF and all the AGGRIEVED
20 EMPLOYEES, DEFENDANT engaged in a company-wide policy, practice and procedure
21 which failed to correctly classify PLAINTIFF and the AGGRIEVED EMPLOYEES as
22 employees. The proper classification of these employees is DEFENDANT's burden. As a result
23 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
24 failed to pay all required wages for work performed by PLAINTIFF and other AGGRIEVED
25 EMPLOYEES and violated the California Labor Code and regulations promulgated thereunder
26 as herein alleged.

27 28. All of the conduct and violations alleged herein occurred during the PAGA
28 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect

1 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
3 AJDAR 12157 (Certified for Publication 12/19/18).

4 **JURISDICTION AND VENUE**

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

7 30. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
8 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its
9 principal offices and facilities in this County and/or conducts substantial business in this
10 County, and (ii) committed the wrongful conduct herein alleged in this County against
11 PLAINTIFF AND the AGGRIEVED EMPLOYEES.

12
13 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

3 **PRAYER FOR RELIEF**

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

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

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

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

12 Dated: August 21, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
13 LLP

14
15 By: 

16 Norman B. Blumenthal
17 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

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

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

May 7, 2020

CA2135

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Garuda Labs, Inc.

Online Filing

Certified Mail #70192280000075854725

Sumir Meghani

340 Brannan St., Ste 302

San Francisco, CA 94107

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Garuda Labs, Inc. in California and classified as independent contractors and/or non-exempt employees during the time period of May 7, 2019 until a date as determined by the Court. Our offices represent Plaintiff Ishan Basu-Kesselman (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Garuda Labs, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a independent contractor from August of 2018 to January of 2020. Thereafter, Plaintiff was reclassified by Defendant and worked as an employee from January of 2020 to March of 2020. At all times, Plaintiff was entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As independent contractors, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Regardless of Defendant’s classification of Plaintiff and Aggrieved Employees, Defendant

unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

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

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

10 ISHAN BASU-KESSELMAN, an individual, on
11 behalf of himself, on behalf of all persons similarly
situated,

12 Plaintiff,

13 vs.

14 GARUDA LABS, INC.; a Corporation; and DOES
15 1 through 50, inclusive,

16 Defendants.
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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, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Ishan Basu-Kesselman ("PLAINTIFF"), an individual, on behalf of himself and
2 all other similarly situated current and former employees, alleges on information and belief,
3 except his own acts and knowledge, the following:

4 5 **INTRODUCTION**

6 1. Defendant Garuda Labs, Inc.. Known to the general public as "Instawork"
7 ("DEFENDANT") in order to service customers hires workers to aid DEFENDANT in providing
8 manual labor services to their clients. The cost, as proscribed by law, of the personnel hired to
9 work for DEFENDANT, includes not only the pay of these employees but the cost of the
10 employer's share of tax payments to the federal and state governments for income taxes, social
11 security taxes, medicare insurance, unemployment insurance and payments for workers'
12 compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest
13 extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of
14 these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other employees.
15 As employer, DEFENDANT is legally responsible for the payment of all these expenses. This
16 lawsuit is brought in order to collect the wages due them as employees of DEFENDANT, the cost
17 of the employer's share of payments to the federal and state governments for income taxes, social
18 security taxes, medicare insurance, unemployment insurance and payments for workers'
19 compensation insurance, plus penalties and interest.

20 21 **THE PARTIES**

22 2. DEFENDANT at all relevant times mentioned herein conducted and continues to
23 conduct substantial and regular business in the State of California.

24 3. DEFENDANT is a startup that connects gig economy workers with jobs in select
25 markets. DEFENDANT's workers are composed of independent contractors and employees.

26 4. PLAINTIFF worked for DEFENDANT as an independent contractor performing
27 "gigs" working manual labor from August of 2018 to January of 2020 and also worked for
28 DEFENDANT from January of 2020 to March of 2020 performing the same "gigs" and was

1 reclassified as an employee during this time period. During his employment with DEFENDANT,
2 PLAINTIFF accepted work “gigs” via DEFENDANT’s application he was required to download
3 on his personal cell phone. These “gigs” PLAINTIFF accepted via DEFENDANT’s application,
4 were jobs, including but not limited to, working as a prep cook, line cook, event server and waiter
5 at various places, such as, golf courses, hotels, restaurants, sporting venues, beach events, and
6 award ceremonies including the Emmy’s.

7 5. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
8 or employer to engage in . . . [w]illful misclassification of an individual as an independent
9 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
10 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each
11 violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
12 in the event that an employer is found to have engaged in “a pattern or practice of these
13 violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more
14 than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties
15 or fines permitted by law.” Cal. Labor Code § 226.8.

16 6. Here, DEFENDANT has willfully misclassified PLAINTIFF and other workers who
17 accepted “Gigs” via Defendant’s application as described in Cal. Labor Code § 226.8, and further,
18 that DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by
19 the California Labor Code.

20 7. Upon hire, the position was represented by DEFENDANT to PLAINTIFF and the
21 other workers as an independent contractor position capable of paying an hourly rate for the time
22 they spend providing manual labor to DEFENDANT’s third party customers. PLAINTIFF and
23 other workers were not compensated overtime wages for any of their time spent working in
24 excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty (40) hours
25 in a workweek. PLAINTIFF and other workers were paid the hourly rate to perform labor
26 services on DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any
27 other wages besides the non-negotiable hourly rate and they were not allowed to record their time
28 while they waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF

1 and other CALIFORNIA CLASS Members for the time spent driving to and from jobs, and all the
2 other time they spent working for DEFENDANT outside of the job assignment they were placed
3 at with DEFENDANT's third party customers. The finite set of tasks required to be performed
4 by the workers is, when notified via cell phone, travel to DEFENDANT's customers to perform
5 jobs including but not limited to, restaurant service tasks, delivering goods, merchandising,
6 custodial services, janitorial tasks, picking and packing goods warehousing tasks all in accordance
7 with DEFENDANT's business practices and policies.

8 8. To perform their job duties, PLAINTIFF and the other workers perform work
9 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
10 complete control over the work performed and the manner and means in which the work was
11 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
12 as to how to perform their work.

13 9. California Labor Code § 3357 defines "employee" as "every person in the service
14 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
15 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
16 Code's presumption that workers are employees, the California Supreme Court has determined
17 the most significant factor to be considered in distinguishing an independent contractor from an
18 employee is whether the *employer or principal has control or the right to control the work*
19 *both as to the work performed and the manner and means in which the work is performed.*
20 DEFENDANT heavily controlled both the work performed and the manner and means in which the
21 PLAINTIFF and the other workers performed their work in that:

22 (a) PLAINTIFF and other workers were not involved in a distinct business, but
23 instead were provided with instructions as to how to perform their work and the manner and means
24 in which the work was to be performed by means of DEFENDANT's and DEFENDANT's
25 customers manuals and written instructions;

26 (b) PLAINTIFF and other workers were continuously provided with training and
27 supervision, including following DEFENDANT's company documents and received training from
28 DEFENDANT as to how and in what way to perform the services;

1 (c) DEFENDANT set the requirements as to what policies and procedures all
2 of the workers were to follow, including but not limited to, hourly rates, location of assignment,
3 where to park, and what to wear;

4 (d) PLAINTIFF and other workers had no opportunity for profit or loss because
5 DEFENDANT only paid these workers an hourly rate. DEFENDANT controlled and assigned the
6 workers which tasks were to be performed;

7 (e) PLAINTIFF and other workers performed manual labor services which are
8 part of DEFENDANT's principal business and is closely integrated with and essential to the
9 employer's business of providing manual laborers to their customers;

10 (f) PLAINTIFF and other workers performed the work themselves and did not
11 hire others to perform their work for them;

12 (g) PLAINTIFF and other workers did not have the authority to make
13 employment-related personnel decisions;

14 (h) PLAINTIFF and other workers performed their work in a particular order and
15 sequence in accordance with DEFENDANT's and DEFENDANT's customers company policies;
16 and,

17 (i) DEFENDANT had the "right" to control every critical aspect of
18 DEFENDANT's labor operations in that DEFENDANT provided the customer, assigned where
19 the workers were to go, assigned the hourly rate, and step-by-step instructions to PLAINTIFF and
20 other workers as to the entire process of working at their assigned locations. PLAINTIFF and
21 other workers provided manual labor services ONLY for DEFENDANT's customers, which
22 DEFENDANT controlled via the company's mobile application.

23 10. As a result, stripped of all the legal fictions and artificial barriers to an honest
24 classification of the relationship between PLAINTIFF and all the other workers on the one hand,
25 and DEFENDANT on the other hand, PLAINTIFF and all the other workers are and were
26 employees of DEFENDANT and not independent contractors of DEFENDANT and should
27 therefore be properly classified as non-exempt, hourly employees.

28 11. PLAINTIFF brings this Class Action on behalf of himself and a California class,

1 defined as all individuals who worked for DEFENDANT in California and who were classified as
2 independent contractors and/or non exempt employees (the "CALIFORNIA CLASS") at any time
3 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
4 date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
5 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
6 dollars (\$5,000,000.00).

7 12. The true names and capacities, whether individual, corporate, associate or otherwise
8 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to
9 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ.
10 Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that each of
11 the Defendants designated herein is legally responsible in some manner for the unlawful acts
12 referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the
13 true names and capacities of the Defendants when they have been ascertained and become known.

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

22 23 THE CONDUCT

24 14. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
25 Members as defined by DEFENDANT was executed by them through the performance of
26 non-exempt labor.

27 15. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
28 non-exempt labor subject to DEFENDANT's complete control over the manner and means of

1 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by
2 which all of these CALIFORNIA CLASS Members were classified as "independent contractors"
3 exempt from compensation for overtime worked, meal breaks and rest breaks, and
4 reimbursement for business related expenses. By reason of this uniform misclassification, the
5 CALIFORNIA CLASS Members were also required to pay DEFENDANT's share of payroll taxes
6 and mandatory insurance premiums. As a result of this uniform misclassification practice, policy
7 and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members who
8 performed this work for DEFENDANT, DEFENDANT committed acts of unfair competition in
9 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
10 "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly
11 classify PLAINTIFF and the other CALIFORNIA CLASS Members as employees and thereby
12 failed to pay them wages for all time worked, reimbursement of business related expenses, failed
13 to provide them with meal and rest breaks, and failed to reimburse these employees for the
14 employer's share of payroll taxes and mandatory insurance. The proper classification of these
15 employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
16 obligation to meet this burden, DEFENDANT violated the California Labor Code and regulations
17 promulgated thereunder as herein alleged.

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

28 17. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA

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

11 18. DEFENDANT, as a matter of law, has the burden of proving that employees are
12 properly classified and that DEFENDANT otherwise complies with applicable laws.
13 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
14 CALIFORNIA CLASS Members as independent contractors.

15 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
16 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
17 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock
22 without paying them for all the time they were under DEFENDANT's control. As a result of their
23 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time
24 to time not fully relieved of duty by DEFENDANT and DEFENDANT's customers for their meal
25 periods and would clock out of DEFENDANT's timekeeping system but continue to work during
26 what should have been their off-duty meal period. PLAINTIFF and other CALIFORNIA CLASS
27 Members also worked more than eight hours in a workday and/or forty hours in a workweek, but
28 DEFENDANT failed to pay these employees overtime pay as DEFENDANT only paid a flat hourly

1 rate for all time worked. Additionally, PLAINTIFF and CALIFORNIA CLASS Members were not
2 paid for the time they spent reviewing DEFENDANT's application regarding a job that was
3 assigned, or the requirements for the job and also for the time spent responding to calls and
4 emails from DEFENDANT and DEFENDANTS's customers. PLAINTIFF and CALIFORNIA
5 CLASS Members were only paid when the clocked in at DEFENDANT's customers work sites
6 to perform their manual labor. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
7 forfeited minimum wages and overtime wage compensation by working without their time being
8 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and
9 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
10 is evidenced by DEFENDANT's business records.

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

21 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use personal cellular phones
23 and use their personal vehicles as a result of and in furtherance of their job duties as employees
24 for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of the personal cellular phones and personal vehicles for DEFENDANT's
26 benefit. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS
27 Members were required to use their personal vehicles to travel to different locations each work
28 shift and were also required to use DEFENDANT's mobile application and as such it is mandatory

1 to have a cell phone that is compatible with DEFENDANT's mobile application. As a result, in
2 the course of their employment with DEFENDANT PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
4 limited to, costs related to the use of their personal cellular phones and all on behalf of and for
5 the benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA CLASS Members
6 were also not reimbursed or indemnified by DEFENDANT for the cost associated with using their
7 personal vehicles while performing for DEFENDANT. Moreover, PLAINTIFF and other
8 CALIFORNIA CLASS Members were also required from time to time to pay for parking costs
9 at certain shopping centers and delivery locations. As a result, in the course of their employment
10 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to travel
12 all on behalf of and for the benefit of DEFENDANT.

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

22 23. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA
23 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
24 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
25 engaging in a company-wide policy, practice and procedure which failed to correctly classify
26 PLAINTIFF and the CALIFORNIA CLASS Members as employees. The proper classification of
27 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard
28 of the obligation to meet this burden, DEFENDANT failed to pay all required wages for work

1 performed by PLAINTIFF and other CALIFORNIA CLASS Members and violated the California
2 Labor Code and regulations promulgated thereunder as herein alleged.

3 24. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
4 independent contractor and thus did not receive pay for all time worked, including minimum and
5 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
6 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
7 receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF
8 therefore forfeited meal and rest breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice which did not provide for mandatory meal
10 and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFF all wages still owed to him
11 or any penalty wages owed to him under California Labor Code § 203. The amount in
12 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 14 **THE CALIFORNIA CLASS**

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

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

26 27. All CALIFORNIA CLASS Members who performed and continue to perform this
27 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in that
28 they are subject to DEFENDANT's policy and practice that required them to perform work

1 without compensation as required by law.

2 28. During the CALIFORNIA CLASS PERIOD, DEFENDANT violated the rights of the
3 PLAINTIFF and the CALIFORNIA CLASS Members under California law, without limitation, in
4 the following manners:

5 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
7 employer, devised and implemented a scheme whereby PLAINTIFF and the
8 CALIFORNIA CLASS Members are forced to unlawfully, unfairly and
9 deceptively shoulder the cost of DEFENDANT's wages for all unpaid wages,
10 business related expenses, and DEFENDANT's share of employment taxes,
11 social security taxes, unemployment insurance and workers' compensation
12 insurance;

13 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
15 having in place company policies, practices and procedures that uniformly
16 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
17 independent contractors;

18 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
20 failing to have in place a company policy, practice and procedure that
21 accurately determined the amount of working time spent by PLAINTIFF and
22 the CALIFORNIA CLASS Members performing non-exempt employee
23 labor;

24 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
26 other members of the CALIFORNIA CLASS with all legally required meal
27 and rest breaks;

28 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code

1 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing
2 to reimburse PLAINTIFF and the CALIFORNIA CLASS members with
3 necessary expenses incurred in the discharge of their job duties; and,

- 4 (f) Committing an act of unfair competition in violation of the UCL, by
5 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
6 overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS
7 who were improperly classified as exempt, and retaining the unpaid
8 overtime to the benefit of DEFENDANT.

9 29. As a result of DEFENDANT's policies, practices and procedures, there are
10 numerous questions of law and fact common to all CALIFORNIA CLASS Members who worked
11 for during the CALIFORNIA CLASS PERIOD. These questions include, but are not limited, to
12 the following:

- 13 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
14 misclassified as independent contractors by DEFENDANT;
15 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all
16 afforded all the protections of the California Labor Code that apply when
17 properly classified as non-exempt employees;
18 (c) Whether DEFENDANT's policies, practices and pattern of conduct
19 described in this Complaint was and is unlawful;
20 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
21 federal employment taxes as required by state and federal tax laws;
22 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
23 CALIFORNIA CLASS Members as independent contractors exempt from
24 hourly wages laws for all time worked and failing to pay the CALIFORNIA
25 CLASS Members all amounts due violates applicable provisions of
26 California State law;
27 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
28 CALIFORNIA CLASS Members with accurate records of all time worked;

1 (g) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct; and,

3 (h) Whether DEFENDANT's conduct was willful.

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

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

9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
11 CALIFORNIA CLASS Member;

12 (c) The claims of the representative PLAINTIFF are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
14 Members, was classified as an independent contractor upon hiring based on the defined corporate
15 policies and practices and labors under DEFENDANT's procedure that failed to properly classify
16 the PLAINTIFF and the CALIFORNIA CLASS Members. PLAINTIFF sustained economic injury
17 as a result of DEFENDANT's employment practices. PLAINTIFF and the CALIFORNIA CLASS
18 Members were and are similarly or identically harmed by the same unlawful, unfair, deceptive and
19 persuasive pattern of misconduct engaged in by DEFENDANT by deceptively telling all the
20 CALIFORNIA CLASS Members that they were not entitled to minimum wages, the employer's
21 share of payment of payroll taxes and mandatory insurance, and reimbursement for business
22 expenses based on the defined corporate policies and practices, and unfairly failed to pay these
23 employees who were improperly classified as independent contractors; and,

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

1 claims of all employees in the CALIFORNIA CLASS.

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

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

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

10 (ii) Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of the interests of the other members not
12 party to the adjudication or substantially impair or impeded their ability to protect their interests.

13 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
14 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
15 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
16 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly
17 failed to take proper steps to determine whether the CALIFORNIA CLASS Members were
18 properly classified as independent contractors, and thereby denied these employees wages and
19 payments for business expenses and the employer's share of payroll taxes and mandatory
20 insurance as required by law.

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

26 (c) Common questions of law and fact exist as to members of the CALIFORNIA
27 CLASS with respect to the practices and violations of California and federal law as listed above,
28 and predominate over any question affecting only individual members, and a Class Action is

1 superior to other available methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

3 (i) The interest of the CALIFORNIA CLASS Members in individually
4 controlling the prosecution or defense of separate actions;

5 (ii) The extent and nature of any litigation concerning the controversy
6 already commenced by or against members of the CALIFORNIA CLASS;

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

12 (iv) The desirability or undesirability of concentration the litigation of
13 the claims in the particular forum;

14 (v) The difficulties likely to be encountered in the management of a
15 Class Action; and,

16 (vi) The basis of DEFENDANT's policies and practices applied to all the
17 CALIFORNIA CLASS Members.

18 32. The Court should permit this Action to be maintained as a Class Action pursuant
19 to Cal. Code of Civ. Proc. § 382 because:

20 (a) The questions of law and fact common to the CALIFORNIA CLASS
21 predominate over any question affecting only individual members;

22 (b) A Class Action is superior to any other available method for the fair and
23 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

24 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
25 to bring all CALIFORNIA CLASS Members before the Court;

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

28 (e) There is a community of interest in obtaining appropriate legal and equitable

1 relief for the acts of unfair competition, statutory violations and other improprieties, and in
2 obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have
3 inflicted upon the CALIFORNIA CLASS;

4 (f) There is a community of interest in ensuring that the combined assets and
5 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
6 CLASS Members for any injuries sustained;

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

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

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

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

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

22 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
23 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the
25 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the
26 filing of the Complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under

1 five million dollars (\$5,000,000.00).

2 35. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
3 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare
4 Commission (“IWC”) Wage Order requirements intentionally, knowingly, and wilfully, on the
5 basis of job title alone and without regard to the actual overall requirements of the job,
6 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS as independent contractors in order to avoid the payment of all wages, and in order to
8 avoid the obligations under the applicable California Labor Code provisions. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

11 36. DEFENDANT maintains records from which the Court can ascertain and identify
12 by job title each of DEFENDANT’s employees who as CALIFORNIA LABOR SUB-CLASS
13 Members have been systematically, intentionally and uniformly misclassified as independent
14 contractors as a matter of DEFENDANT’s corporate policy, practices and procedures.
15 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
16 they have been identified.

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

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

- 21 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying
22 and thereby failing to pay PLAINTIFF and the members of the
23 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for which
24 DEFENDANT is liable;
- 25 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
26 failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR
27 SUB-CLASS the correct overtime pay for a workday longer than eight (8)
28 hours and/or a workweek longer than forty (40) hours for which

1 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

- 2 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
5 meal breaks and the legally required rest breaks;
- 6 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS who were improperly
8 classified as independent contractors with an accurate itemized statement
9 in writing showing the gross wages earned, the net wages earned, all
10 applicable hourly rates in effect during the pay period and the corresponding
11 amount of time worked at each hourly rate by the employee;
- 12 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
14 incurred in the discharge of their job duties; and,
- 15 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
16 an employee is discharged or quits from employment, the employer must
17 pay the employee all wages due without abatement, by failing to tender full
18 payment and/or restitution of wages owed or in the manner required by
19 California law to the members of the CALIFORNIA LABOR SUB-CLASS
20 who have terminated their employment.

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

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

1 SUB-CLASS and will apply to every member of the CALIFORNIA LABOR
2 SUB-CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims of
4 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like
5 all other members of the CALIFORNIA LABOR SUB-CLASS was
6 improperly classified as an independent contractor and was thus denied
7 minimum wage pay and meal and rest breaks, among other things, as a result
8 of DEFENDANT's systematic classification practices. PLAINTIFF and all
9 other members of the CALIFORNIA LABOR SUB-CLASS sustained
10 economic injuries arising from DEFENDANT's violations of the laws of
11 California; and,

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

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

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

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

1 the CALIFORNIA LABOR SUB-CLASS; or,

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

7 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
8 refused to act on grounds generally applicable to the CALIFORNIA LABOR
9 SUB-CLASS, making appropriate class-wide relief with respect to the
10 CALIFORNIA LABOR SUB-CLASS as a whole in that the DEFENDANT
11 uniformly classified and treated the members of the CALIFORNIA LABOR
12 SUB-CLASS as independent contractors and, thereafter, uniformly failed
13 to take proper steps to determine whether the CALIFORNIA LABOR SUB-
14 CLASS Members were properly classified as independent contractors, and
15 thereby denied these employees the protections afforded to them under the
16 California Labor Code;

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

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

1 CLASS Members when compared to the substantial expense and
2 burden of individual prosecution of this litigation;

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

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

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

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

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

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

27 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
28 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 substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour related
2 claims arising out of the conduct of DEFENDANT.

3
4 **JURISDICTION AND VENUE**

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

9 43. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
10 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its
11 principal offices and facilities in this County and/or conducts substantial business in this County,
12 and (ii) committed the wrongful conduct herein alleged in this County against members of the
13 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

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

21 45. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
22 17021.

23 46. Section 17200 of the California Business & Professions Code defines unfair
24 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies
25 to violations of labor laws in the employment context. Section 17203 authorizes injunctive,
26 declaratory and/or other equitable relief with respect to unfair competition as follows:

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

1 unfair competition, as defined in this chapter, or as may be necessary to restore to
2 any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition.

3 California Business & Professions Code § 17203.

4 47. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
5 in a business practice which violates California law, including but not limited to the applicable
6 Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7,
7 226.8, 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations §
8 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,
9 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct
10 held to constitute unfair competition, including restitution of wages wrongfully withheld, business
11 expenses wrongfully withheld and for the payment of the employer's share of income taxes,
12 social security taxes, unemployment insurance and workers' compensation insurance.

13 48. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
14 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has
15 deprived them of valuable rights and benefits guaranteed by law, all to their detriment and to the
16 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and
17 injunctive relief is necessary to prevent and remedy this unfair competition, and pecuniary
18 compensation alone would not afford adequate and complete relief.

19 49. All the acts described herein as violations of, among other things, the California
20 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
21 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
22 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive, unfair
23 and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

24 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
25 fraudulent in that DEFENDANT's policy and practice was to represent to the CALIFORNIA
26 CLASS Members that they were not entitled to overtime and minimum wages, payment for payroll
27 taxes or mandatory insurance and other benefits as required by California law, when in fact these
28 representations were false and likely to deceive and for which this Court should issue injunctive

1 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
2 wrongfully withheld.

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

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

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

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

20 55. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
22 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
23 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
24 for each workday in which a second off-duty meal period was not timely provided for each ten
25 (10) hours of work.

26 56. PLAINTIFF further demands on behalf of himself and each member of the
27 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
28 provided as required by law.

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

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

12 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
13 do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
15 CLASS have been deprived, by means of the above described unlawful and unfair business
16 practices.

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

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

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

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

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

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

19 73. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
21 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
22 not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
23 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

25 74. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with the requisite compensation, DEFENDANT acted and
28 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for
2 their legal rights, or the consequences to them, and with the despicable intent of depriving them
3 of their property and legal rights, and otherwise causing them injury in order to increase company
4 profits at the expense of these employees.

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

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23 **THIRD CAUSE OF ACTION**

24 **For Failure To Pay Overtime Wages**

25 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

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

28 76. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and

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

3 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to
4 pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the
5 time they worked in excess of the maximum hours permissible by law as required by Cal. Lab.
6 Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
7 Members were regularly required to work, and did in fact work, overtime that DEFENDANT never
8 recorded as evidenced by DEFENDANT's business records and witnessed by DEFENDANT's
9 employees.

10 78. By virtue of DEFENDANT's unlawful failure to pay compensation to PLAINTIFF
11 and the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF
12 and CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
13 economic in amounts which are presently unknown to them and which can be ascertained
14 according to proof at trial.

15 79. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
16 CLASS Members were misclassified as independent contractors and DEFENDANT elected,
17 either through intentional malfeasance or gross nonfeasance, not to pay them for their labor as
18 a matter of corporate policy, practice and procedure.

19 80. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore
20 request recovery of all compensation according to proof, interest, costs, as well as the
21 assessment of any statutory penalties against DEFENDANT in a sum as provided by the California
22 Labor Code and/or other statutes. To the extent overtime compensation is determined to be owed
23 to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203,
25 which penalties are sought herein. Further, PLAINTIFF and the CALIFORNIA LABOR SUB-
26 CLASS Members are entitled to seek and recover statutory costs.

27 81. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all

1 overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted
2 and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for
4 their legal rights, or the consequences to them, and with the despicable intent of depriving them
5 of their property and legal rights, and otherwise causing them injury in order to increase corporate
6 profits at the expense of these employees.

7 8 **FOURTH CAUSE OF ACTION**

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

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

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

13 82. 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 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time,
17 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and
18 the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
19 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
20 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
21 duties for the legally required off-duty meal periods. As a result of their rigorous work
22 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time
23 to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
24 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
25 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
26 by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
27 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
28 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

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

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

20 93. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
21 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
22 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
23 true amount of time worked and the amount of employment taxes which were not properly
24 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
25 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
26 recover liquidated damages of \$50.00 for the initial pay period in which the violation
27 occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code §
28 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00

1 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS
2 herein).

3
4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

9 94. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
10 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
11 through 79 of this Complaint.

12 95. Cal. Lab. Code § 2802 provides, in relevant part, that:

13 An employer shall indemnify his or her employee for all necessary expenditures
14 or losses incurred by the employee in direct consequence of the discharge of
15 his 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.

16 96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
17 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 members for required expenses incurred in the discharge of their job duties for
19 DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the
20 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
21 limited to, the cost associated with the use of their personal cellular phones and personal
22 vehicles for DEFENDANT's benefit. In order to work for DEFENDANT, PLAINTIFF and
23 other CALIFORNIA LABOR SUB-CLASS Members were required to use their personal
24 vehicles to travel and to use DEFENDANT's mobile application and as such it is mandatory to
25 have a cell phone that is compatible with DEFENDANT's mobile application. As a result, in
26 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
27 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which
28 included, but were not limited to, the costs related to the use of their personal cellular phones

1 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed
3 or indemnified by DEFENDANT for the cost associated with using their personal vehicles
4 while driving for DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR
5 SUB-CLASS Members were also required from time to time to pay for parking costs at
6 certain places. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
7 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
8 business expenses which included, but were not limited to, costs related to travel all on behalf
9 of and for the benefit of DEFENDANT. These expenses are necessary to complete their
10 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
11 waiver of this expectation. Although these expenses are necessary expenses incurred by
12 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
13 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
14 for these expenses as an employer is required to do under the laws and regulations of
15 California.

16 97. PLAINTIFF therefore demands reimbursement for expenditures or losses
17 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
18 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
19 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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EIGHTH CAUSE OF ACTION

25

For Failure to Pay Wages When Due

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[Cal. Lab. Code §§ 201, 202 and 203]

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

28

Defendants)

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

4 99. Cal. Lab. Code § 200 states that:

5 As used in this article:

6 (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.

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

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

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

14 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
15 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
16 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
17 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
18 date of payment for purposes of the requirement to provide payment within
72 hours of the notice of quitting.

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

21 103. Cal. Lab. Code § 203 states:

22 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
23 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
24 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

25 104. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-
26 CLASS Members has terminated, yet as to those individuals whose employment terminated,
27 DEFENDANT did not timely tender payment of all wages owed as required by law.

28 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
2 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
3 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
4 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
5 statutory costs as allowed.

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7
8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 C) The wages of all terminated individuals in the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code §
4 203;
- 5 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
6 in which a violation occurs and one hundred dollars (\$100) per each member of
7 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
8 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
9 and an award of costs for violation of Cal. Lab. Code § 226;
- 10 E) Meal and rest period compensation pursuant to California Labor Code Section
11 226.7 and the applicable IWC Wage Order;
- 12 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
13 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
14 costs of suit; and,
- 15 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197.

17 3. On all claims:

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

23
24 Dated: May 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

25
26 By: _____
27 Norman B. Blumenthal
28 Attorneys for Plaintiff

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DEMAND FOR 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