

Assigned for all purposes to: Governor George Deukmejian Courthouse, Judicial Officer: Mark Kim

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JUSTIN PRICE, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

MISTRAS GROUP, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 20LBCV00408

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).

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant Mistras Group, Inc. (“DEFENDANT”) is a corporation and at all
24 relevant times mentioned herein conducted and continues to conduct substantial and regular
25 business in the state of California.

26 5. DEFENDANT is a provider of technology-enabled asset protection solutions used
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1 to evaluate the structural integrity and reliability of critical energy, industrial and public
2 infrastructure. The company operates through three segments: Services, Products & Systems
3 and International

4 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
5 employee entitled to overtime pay and meal and rest periods from June of 2011 to January of
6 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
7 a non-exempt employee paid in whole or in part on an hourly basis and received additional
8 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

14 THE CONDUCT

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

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

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

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

23 15. As a result of their rigorous work schedules, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
25 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
26 EMPLOYEES were required to perform work as ordered by DEFENDANT, from time to time,
27 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
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1 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
2 off-duty meal period from time to time in which these employees were required by
3 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
5 accordance with DEFENDANT's corporate policy and practice.

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

1 17. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
2 her employees with an accurate itemized wage statement in writing showing, among other
3 things, gross wages earned and all applicable hourly rates in effect during the pay period and
4 the corresponding amount of time worked at each hourly rate. From time to time,
5 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
6 identified the correct gross wages earned. Specifically, DEFENDANT violated Cal. Lab. Code
7 Section 226 by failing to identify the correct rates of pay and number of hours worked on
8 various wage statements for the items of pay, including but not limited to, "Regular" "OVER
9 TIME" and "DBL - TIME" which were wage payments. Aside from the violations listed above,
10 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
11 requirements under California Labor Code 226 *et seq.* As a result, from time to time
12 DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
13 statements which violated Cal. Lab. Code § 226.

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

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

8 20. In addition, when DEFENDANT required PLAINTIFF and other AGGRIEVED
9 EMPLOYEES to respond to calls and engage in additional after their shift had already ended
10 at they were at home for the night, this resulted in a second reporting for work in a single
11 workday. In such a circumstance of a second reporting for work in a single workday,
12 DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code
13 Regs., tit. 8, § 11040. Subdivision 5(B) states: "If an employee is required to report for work
14 a second time in any one workday and is furnished less than two (2) hours of work on the
15 second reporting, said employee shall be paid for two (2) hours at the employee's regular rate
16 of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040, subd.
17 5(B).

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

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

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5 **JURISDICTION AND VENUE**

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

18 25. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-24,
19 supra, as though fully set forth at this point.

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

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

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

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

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6 Dated: September 18, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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8 By: /s/ Norman Blumenthal
9 Norman B. Blumenthal
Attorneys for Plaintiff

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

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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1004

May 7, 2020

CA2131

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Mistras Group, Inc.
Certified Mail #70192280000075854695
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Mistras Group, Inc. in California and classified as non-exempt employees during the time period of May 7, 2019 until a date as determined by the Court. Our offices represent Plaintiff Justin Price (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Mistras Group, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from June of 2011 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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6 Attorneys for Plaintiff

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

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 JUSTIN PRICE, an individual, on behalf of
himself, and on behalf of all persons similarly
11 situated,

12 Plaintiff,

13 vs.

14 MISTRAS GROUP, INC., a Corporation; and
Does 1 through 50, Inclusive,

15 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
16 *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,
17 *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; and,

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is a provider of technology-enabled asset protection solutions used
10 to evaluate the structural integrity and reliability of critical energy, industrial and public
11 infrastructure. The company operates through three segments: Services, Products & Systems and
12 International

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from June of 2011 to January of
15 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
16 non-exempt employee paid in whole or in part on an hourly basis and received additional
17 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

25 ///

26 ///

THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock without paying them for all the time they were under DEFENDANT's control. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods and would clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction during what should have been their off-duty meal period. Additionally, DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to drive DEFENDANT's vehicles back to DEFENDANT's office and/or to their homes from time to time, as this was the only feasible way to travel to various work sites assigned by DEFENDANT. DEFENDANT failed to pay PLAINTIFF and CALIFORNIA CLASS Members for all of their time they spent traveling on DEFENDANT's behalf from their home to their first work assignment for the day and also from their last work assignment of their shift to DEFENDANT's office and/or to their own personal residences. Also, from time to time PLAINTIFF and other CALIFORNIA CLASS Members were required to work off the clock completing tasks that included but were not limited to, responding to DEFENDANT while off the clock at their homes after their work shift had ended via their cell phones for work related requests, filling out mandatory paperwork, completing mandatory online training and attending mandatory meetings at DEFENDANT's place of business. As such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under

1 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
2 Members forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable minimum wage and overtime wage rates. To the extent
4 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
5 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
6 1194, 1197, and 1197.1. DEFENDANT's policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business
8 records.

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

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

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

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

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

14 14. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
15 employees with an accurate itemized wage statement in writing showing, among other things,
16 gross wages earned and all applicable hourly rates in effect during the pay period and the
17 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
18 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
19 gross wages earned. Specifically, DEFENDANT violated Cal. Lab. Code Section 226 by failing
20 to identify the correct rates of pay and number of hours worked on various wage statements for
21 the items of pay, including but not limited to, "Regular" "OVER TIME" and "DBL - TIME" which
22 were wage payments. Aside from the violations listed above, DEFENDANT failed to issue to
23 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
24 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
25 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
26 § 226.

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

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

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

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

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

10 11 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 create the risk of:

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

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

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

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

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

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

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

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

22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert
27 their claims through a representative; and,
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1 4) A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will
3 obviate the need for unduly and unnecessary duplicative litigation
4 that is likely to result in the absence of certification of this action
5 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

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

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

24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the acts of unfair competition, statutory violations and
26 other improprieties, and in obtaining adequate compensation for the
27 damages and injuries which DEFENDANT's actions have inflicted upon the
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CALIFORNIA 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 CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

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

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

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

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

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

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

2 (c) Whether DEFENDANT failed to accurately record the applicable overtime
3 rates for all overtime worked PLAINTIFF and the other members of the
4 CALIFORNIA LABOR SUB-CLASS;

5 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with legally required
7 uninterrupted thirty (30) minute meal breaks and rest periods;

8 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
10 wage statements;

11 (f) Whether DEFENDANT has engaged in unfair competition by the
12 above-listed conduct;

13 (g) The proper measure of damages and penalties owed to the members of the
14 CALIFORNIA LABOR SUB-CLASS; and,

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

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

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

26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS

1 the correct overtime pay for which DEFENDANT is liable pursuant to Cal.
2 Lab. Code § 1194 & § 1198;

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

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

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

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

22 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
23 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
24 incurred in the discharge of their job duties.

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

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

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

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

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

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

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

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS which would
9 establish incompatible standards of conduct for the parties opposing
10 the CALIFORNIA LABOR SUB-CLASS; or,

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

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

23 (c) Common questions of law and fact predominate as to the members of the
24 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
25 violations of California Law as listed above, and predominate over any
26 question affecting only individual CALIFORNIA LABOR SUB-CLASS
27 Members, and a Class Action is superior to other available methods for the
28

1 fair and efficient adjudication of the controversy, including consideration
2 of:

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

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

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

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

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

27 4) A class action is superior to other available methods for the fair and
28

1 efficient adjudication of this litigation because class treatment will
2 obviate the need for unduly and unnecessary duplicative litigation
3 that is likely to result in the absence of certification of this action
4 pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 DEFENDANT are sufficient to adequately compensate the members of the
2 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
10 Members classified as non-exempt employees during the CALIFORNIA
11 LABOR SUB-CLASS PERIOD; and,

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

16
17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

24 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
25 § 17021.

26 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
2 as follows:

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

7 Cal. Bus. & Prof. Code § 17203.

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

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

21 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
22 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
23 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
24 accurately to record the applicable rate of all overtime worked, and failed to provide the required
25 amount of overtime compensation due to a miscalculation of the overtime rate that cannot be
26 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
27 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
28

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

3 50. 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 51. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's policies, practices and procedures failed to provide mandatory
9 meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

24 55. All the acts described herein as violations of, among other things, the Industrial
25 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
26 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
27 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
28

1 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

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

23 **and Against All Defendants)**

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

27 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

66. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission

1 requirements and other applicable laws and regulations.

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

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

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

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

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

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

11 ///

12
13 **THIRD CAUSE OF ACTION**

14 **For Failure To Pay Overtime Compensation**

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

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

17 **Defendants)**

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

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

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

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

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

11 78. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
13 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
14 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny
15 timely payment of wages due for the overtime worked by PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these employees
17 the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

16 84. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
18 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
19 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 were required to work, and did in fact work, overtime as to which DEFENDANT failed to
21 accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's
22 business records and witnessed by employees.

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

27 92. As a proximate result of the aforementioned violations, PLAINTIFF and
28

1 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
2 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

3
4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

8 **Defendants)**

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

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

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

96. 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)

97. 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 paragraphs of this Complaint.

98. 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 piece-rate 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,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized

1 statement,

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

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

5 99. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
9 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
10 gross wages earned. Specifically, DEFENDANT violated Cal. Lab. Code Section 226 by failing
11 to identify the correct rates of pay and number of hours worked on various wage statements for
12 the items of pay, including but not limited to, “Regular” “OVER TIME” and “DBL - TIME” which
13 were wage payments. Aside from the violations listed above, DEFENDANT failed to issue to
14 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
15 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
16 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
17 § 226.

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

2
3 **SEVENTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code § 2802]**

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

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

11 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

15 103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for expenses which included, but were not limited to, costs related to using
20 their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
22 their personal cell phones to respond to work related issues. DEFENDANT's conduct was to not
23 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses
24 resulting from using their personal cellular phones for DEFENDANT within the course and scope
25 of their employment for DEFENDANT. These expenses were necessary to complete their
26 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver
27 of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
28

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

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

8
9 **EIGHTH CAUSE OF ACTION**

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

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

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

13 **Defendants)**

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

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

18 As used in this article:

19 (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.

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

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

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

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

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

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

110. Cal. Lab. Code § 203 provides:

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

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
2 from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,

4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
10 action pursuant to Cal. Code of Civ. Proc. § 382;

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

16 C) Meal and rest period compensation pursuant to California Labor Code Section
17 226.7 and the applicable IWC Wage Order;

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

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

26 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
27 1197; and,

1 G) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
2 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
3 costs of suit.

4 3. On all claims:

- 5 A) An award of interest, including prejudgment interest at the legal rate;
6 B) Such other and further relief as the Court deems just and equitable; and,
7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
8 including, but not limited to, pursuant to Labor Code § 226, § 1194 and/or § 2802.
9

10 Dated: May 7, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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12 By: _____
13 Norman B. Blumenthal
14 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

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

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff