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FILED

Superior Court of California

County of Los Angeles

06/05/2025

David W. Stayton, Executive Officer / Clerk of Court

By: M. Miro Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

EZEKIEL H. TREZEVANT IV, an individual,
on behalf of himself, and on behalf of all persons
similarly situated, and on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

LEGENDS SALES & MARKETING, LLC, a
Limited Liability Company; and Does 1 through
50, Inclusive,

Defendants.

Case No. **20STCV45378**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et Seq.*;
2. Failure to Pay Overtime Compensation in Violation of Cal. Lab. Code § 510, *et Seq.*;
3. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
4. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
5. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226;
6. Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
7. Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203;
8. Wrongful Termination in Violation of Public Policy;
9. Violation of Govt. Code § 12940; and
10. 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).

Demand for a Jury Trial

1 Plaintiff Ezekiel H. Trezevant IV ("PLAINTIFF"), an individual, on behalf of himself
2 and all other similarly situated current and former employees, alleges upon information and
3 belief, except for his own acts and knowledge, which are alleged based on personal knowledge,
4 the following:

5 **THE PARTIES**

6 1. Defendant Legends Sales & Marketing, LLC ("DEFENDANT") at all relevant
7 times mentioned herein maintained offices and conducted substantial business in the state of
8 California.

9 2. DEFENDANT is a food, beverage, merchandise retail and stadium operations
10 corporation serving entertainment venues and companies.

11 3. To successfully compete against the other sales and marketing companies,
12 DEFENDANT substantially reduced its labor costs by placing the burden of overtime work on
13 a smaller number of employees that DEFENDANT classified as exempt from overtime wages
14 and other related benefits. The goal of overtime laws includes expanding employment
15 throughout the workforce by putting financial pressure on the employer and nurturing a stout
16 job market, as well as the important public policy goal of protecting employees in a relatively
17 weak bargaining position against the unfair scheme of uncompensated overtime work. An
18 employer's obligation to pay its employees wages is more than a matter of private concern
19 between the parties. That obligation is founded on a compelling public policy judgment that
20 employees are entitled to work a livable number of hours at a livable wage. In addition, statutes
21 and regulations that compel employers to pay overtime relate to fundamental issues of social
22 welfare worthy of protection. The requirement to pay overtime wages extends beyond the
23 benefits individual workers receive because overtime wages discourage employers from
24 concentrating work in a few overburdened hands and encourage employers to instead hire
25 additional employees. Especially in today's economic climate, the importance of spreading
26 available work to reduce unemployment cannot be overestimated.

27 4. PLAINTIFF was employed by DEFENDANT in California as a Sales Consultant
28 from October of 2017 to June of 2020 and was at all relevant times classified by DEFENDANT

1 as an employee exempt from overtime pay and the legally required meal and rest periods.

2 5. Upon hire, the position of a Sales Consultant was described to PLAINTIFF and
3 the other Sales Consultants as a position that was exempt from overtime pay and other related
4 benefits.

5 6. As part of their business, DEFENDANT employs a fleet of “Sales Consultants”
6 PLAINTIFF and other Sales Consultants perform day-to-day sales related tasks. The finite set
7 of sales related tasks required to be performed by the Sales Consultants were all in accordance
8 with DEFENDANT’s established procedures and protocols.

9 7. Plaintiff brings this class action on behalf of himself and a California class,
10 defined as all individuals who are or previously were employed by DEFENDANT as a Premium
11 Sales Consultant or a Senior Sales Consultant who did not sign severance agreements and who
12 did not opt out of the Class Action in California (the “CALIFORNIA CLASS”) from November
13 24, 2016 to March 19, 2024. (the “CALIFORNIA CLASS PERIOD”). The amount in
14 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
15 dollars (\$5,000,000.00).

16 8. The work schedule for the PLAINTIFF and other CALIFORNIA CLASS
17 Members was set by DEFENDANT. The PLAINTIFF and other CALIFORNIA CLASS
18 Members worked in excess of eight (8) hours in a workday and more than forty (40) hours in
19 a workweek.

20 9. For purposes of exempting inside or commissioned salespersons from the
21 requirements of overtime, California Code of Regulations Section 11040(3)(A) provides that
22 the provisions of subsections (A), (B) and (C) [of the Wage Order] shall not apply to any
23 employee whose earnings exceed one and one-half (1 ½) times the California minimum wage
24 if more than half of the employee’s compensation represents commissions. PLAINTIFF and the
25 other members of the CALIFORNIA CLASS were not paid according to the structure above,
26 and were, therefore, not exempt from the requirement that they be paid overtime. Further,
27 employees who are paid pursuant to the pay structure outlined by Cal. Code of Regs. § 11040(3)
28 would only be exempt from the provisions of subsections (A), (B) and (C), which govern the

1 payment of overtime. Nothing in this limited exemption, however, relieves an employer from
2 the following obligations of:

- 3 (a) California Code of Regulations § 11040(4), which requires employers to pay at
4 least minimum wage to employees;
- 5 (b) California Code of Regulations § 11040(7), which requires employers to provide
6 accurate itemized wage statements to employees;
- 7 (c) California Code of Regulations § 11040(11), which requires employers to provide
8 meal periods to employees; or
- 9 (d) California Code of Regulations § 11040(12), which requires employers to provide
10 rest periods to employees.

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

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

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

8 16. Individuals in these Sales Consultant positions are and were employees who are
9 entitled to overtime compensation and other related benefits and prompt payment of amounts
10 that the employer owes an employee when the employee quits or is terminated, and other
11 compensation and working conditions that are prescribed by law. During their employment
12 with DEFENDANT, the PLAINTIFF and the other CALIFORNIA CLASS Members performed
13 non-exempt tasks for DEFENDANT, but were nevertheless classified by DEFENDANT as
14 exempt from overtime pay and worked more than eight (8) hours in a workday and in excess of
15 forty (40) hours in a workweek. Although DEFENDANT required PLAINTIFF and other
16 CALIFORNIA CLASS Members to work overtime, DEFENDANT uniformly denied these
17 employees overtime compensation that California law requires. The PLAINTIFF and the
18 CALIFORNIA CLASS Members work in California and DEFENDANT's practices and
19 procedures are and were common throughout California.

20 17. DEFENDANT misclassified as exempt PLAINTIFF and all other members of the
21 CALIFORNIA CLASS solely on the basis of their job title and without regard to
22 DEFENDANT's realistic expectations, the actual overall requirements of the job, the hours
23 worked or the pay received by the employee. Consequently, PLAINTIFF and the other
24 members of the CALIFORNIA CLASS are uniformly and systematically exempted by
25 DEFENDANT from payment of overtime wages due for overtime worked during the
26 CALIFORNIA CLASS PERIOD. By reason of this uniform exemption policy, practice and
27 procedure applicable to the PLAINTIFF and the other CALIFORNIA CLASS Members who
28 performed work as Sales Consultants for DEFENDANT, DEFENDANT committed acts of

1 unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and
3 procedure which failed to properly classify the PLAINTIFF and the other CALIFORNIA
4 CLASS Members and thereby failed to pay them wages for all work performed, including
5 overtime wages. The proper classification of these employees is DEFENDANT's burden. As
6 a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
7 DEFENDANT failed to pay all required compensation for all overtime worked by the
8 PLAINTIFF and the other CALIFORNIA CLASS Members and violated the California Labor
9 Code and regulations promulgated thereunder as herein alleged.

10 18. DEFENDANT, as a matter of law, has the burden of proving that (a) employees
11 were properly classified as exempt and that (b) DEFENDANT otherwise complied with
12 applicable laws. Other than the initial classification of the PLAINTIFF and the other
13 CALIFORNIA CLASS Members as exempt from being paid overtime at the time of hire,
14 DEFENDANT had no business policy, practice or procedure to ensure that the PLAINTIFF and
15 the other CALIFORNIA CLASS Members were properly classified as exempt, and in fact, as
16 a matter of corporate policy erroneously and unilaterally classified all the CALIFORNIA
17 CLASS Members as exempt without regard to whether they qualified for such exemption.

18 19. Neither the PLAINTIFF, nor any member of the CALIFORNIA CLASS, were
19 primarily engaged in work of a type that was or now is directly related to the DEFENDANT's
20 management policies or general business operations, when giving these words a fair but narrow
21 construction. Neither the PLAINTIFF, nor any member of the CALIFORNIA CLASS was
22 primarily engaged in work of a type that was or now is performed at the level of the policy or
23 management of the DEFENDANT. To the contrary, the work of DEFENDANT's Sales
24 Consultants was work wherein PLAINTIFF and the members of the CALIFORNIA CLASS
25 were primarily engaged in the day to day business operations of the DEFENDANT. The work
26 of a Sales Consultant did not permit judgment or discretion that was independent, as this work
27 was performed according to DEFENDANT's established criteria and procedures.

28 20. PLAINTIFF and the other CALIFORNIA CLASS Members employed by

1 DEFENDANT were not engaged in work of a type that was or now is performed more than half
2 of their working time away from the employer's place of business performing sales-related
3 activities. PLAINTIFF and the other CALIFORNIA CLASS Members employed by
4 DEFENDANT were also not engaged in work of a type that was or now is compensated by a
5 exempt commission scheme in that PLAINTIFF and other CALIFORNIA CLASS Members
6 were not paid according to the structure outlined in California Code of Regulations §
7 11040(3)(A) that provides:

8 The provisions of subsections (A), (B) and (C) [of the Wage Order] above
9 shall not apply to any employee whose earnings exceed one and one-half (1
10 1/2) times the minimum wage if more than half of that employee's
11 compensation represents commissions.

12 Instead, the PLAINTIFF and CALIFORNIA CLASS Members were and are compensated in
13 such a manner that they fell outside of the "inside salesperson" or "commissioned salesperson"
14 exemption, and should therefore have been properly classified as non-exempt employees
15 entitled to overtime compensation.

16 21. PLAINTIFF and the other CALIFORNIA CLASS Members were and are uniformly
17 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
18 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF and the
19 other CALIFORNIA CLASS Members are properly classified under the applicable Industrial
20 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as
21 exempt from applicable California labor laws. Since DEFENDANT affirmatively and wilfully
22 misclassified the PLAINTIFF and the other CALIFORNIA CLASS Members in compliance
23 with California labor laws, DEFENDANT's practices violated and continue to violate
24 California law. In addition, DEFENDANT acted deceptively by falsely and fraudulently telling
25 the PLAINTIFF and each member of the CALIFORNIA CLASS that they were exempt from
26 compensation for all earned wages and overtime pay when DEFENDANT knew or should have
27 known that this statement was false and not based on known facts. DEFENDANT also acted
28 unfairly by violating the California labor laws, and as a result of this policy and practice,
DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by

1 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
2 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
3 California law.

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

14 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones as a result of and in furtherance of their job duties as employees for
17 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
18 associated with the use of their personal cellular phones for DEFENDANT's benefit.
19 DEFENDANT also required PLAINTIFF and other CALIFORNIA CLASS Members to use their
20 personal home offices without reimbursing them for the costs associated with such use. As a
21 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
22 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
23 were not limited to, costs related to the use of their personal cellular phones and home offices
24 all on behalf of and for the benefit of DEFENDANT.

25 24. DEFENDANT also failed to provide the PLAINTIFF and other members of the
26 CALIFORNIA CLASS with a wage statement in writing that accurately sets forth gross and net
27 wages earned, all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the PLAINTIFF and the CALIFORNIA CLASS

1 Members. This conduct violated Cal. Lab. Code § 226(a). Aside, from the violations listed
2 above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all
3 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
4 to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
5 statements which violated Cal. Lab. Code § 226.

6 25. Specifically as to PLAINTIFF, he was employed by DEFENDANT in California
7 from October of 2017 to June of 2020 as a Sales Consultant and was at all relevant times
8 classified as an employee exempt from overtime pay and legally required meal and rest periods.
9 DEFENDANT required PLAINTIFF to work in excess of eight (8) hours in a workday and
10 more than forty (40) hours in a workweek. As a result of DEFENDANT's misclassification of
11 PLAINTIFF as exempt from overtime wages, PLAINTIFF was never paid for all his overtime
12 worked. PLAINTIFF was also required to perform work as ordered by DEFENDANT for more
13 than five (5) hours during a shift without receiving a meal and rest break as evidenced by daily
14 time reports for PLAINTIFF. DEFENDANT had no policy in place to compensate PLAINTIFF
15 for these missed meal and rest breaks as required by law. PLAINTIFF therefore forfeited meal
16 and rest breaks without additional compensation and in accordance with DEFENDANT's strict
17 corporate policy and practice. DEFENDANT also failed to provide PLAINTIFF with a wage
18 statement in writing that accurately sets forth gross wages earned, all applicable hourly rates in
19 effect during the pay period and the corresponding amount of time worked at each hourly rate,
20 including overtime worked by PLAINTIFF. This conduct violated Cal. Lab. Code § 226. As
21 a result of DEFENDANT's failure classify PLAINTIFF correctly, DEFENDANT owed
22 PLAINTIFF wages at the time of his termination. To date, DEFENDANT has not paid
23 PLAINTIFF any of the wages still owed to him as alleged herein and DEFENDANT has also
24 not paid PLAINTIFF any penalty wages owed to him under Cal. Labor Code § 203.

25 26. In or around May of 2020, and continuing throughout the rest of PLAINTIFF's
26 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
27 DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's
28 failure to properly follow and pay PLAINTIFF sick leave under the Families First Coronavirus

1 Response Act and the Family Medical Leave Act during the Covid-19 pandemic.

2 27. Subsequent to PLAINTIFF's participation in protective activity by complaining to
3 DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
4 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
5 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
6 practices in May of 2020, DEFENDANT terminated PLAINTIFF's employment with
7 RESPONDENT in June of 2020. As a result, there is a causal link between the protected
8 activity and DEFENDANT's decision to terminate his employment, which is against public
9 policy. Prior to filing this action, PLAINTIFF exhausted his administrative remedies by filing
10 a timely administrative complaint with the Department of Fair Employment and Housing
11 ("DFEH") and received a DFEH right-to-sue letter on August 11, 2020.

12
13 **THE CALIFORNIA CLASS**

14 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
15 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
16 Action, pursuant to California Code of Civil Procedure, Section 382 on behalf of a California
17 class, defined as all individuals who are or previously were employed by DEFENDANT as a
18 Premium Sales Consultant or a Senior Sales Consultant who did not sign severance agreements
19 and who did not opt out of the Class Action in California (the "CALIFORNIA CLASS") from
20 November 24, 2016 to March 19, 2024. (the "CALIFORNIA CLASS PERIOD"). The amount
21 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
22 dollars (\$5,000,000.00).

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

25 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
26 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
27 Requirements, and the applicable provisions of California law, intentionally, knowingly and
28 wilfully engaged in a practice whereby DEFENDANT unlawfully, unfairly and deceptively

1 instituted a practice to ensure that the persons employed in a Sales Consultant position are not
2 properly classified as non-exempt from the requirements of California Labor Code §§ 510, *et*
3 *seq.*

4 31. DEFENDANT has the burden of proof that each and every employee is properly
5 classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
6 DEFENDANT, however, as a matter of uniform and systematic policy, practice and procedure,
7 had in place during the CALIFORNIA CLASS PERIOD and still has in place a policy, practice
8 and procedure that misclassifies the CALIFORNIA CLASS Members as exempt.
9 DEFENDANT's uniform policy, practice and procedure in place at all times during the
10 CALIFORNIA CLASS PERIOD and currently in place is to systematically classify each and
11 every CALIFORNIA CLASS Member as exempt from the requirements of the California Labor
12 Code §§ 510, *et seq.* This common business practice applicable to each and every
13 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
14 and/or deceptive under Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as causation,
15 damages and reliance are not elements of this claim.

16 32. At no time before or during the PLAINTIFF's employment with DEFENDANT was
17 any CALIFORNIA CLASS Member reclassified as non-exempt from the applicable
18 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS
19 Member was initially, uniformly and systematically classified as exempt upon being hired.

20 33. Any individual declarations of any employees offered at this time purporting to
21 indicate that one or more CALIFORNIA CLASS Member may have been properly classified
22 is of no force or affect absent contemporaneous evidence that DEFENDANT's uniform system
23 did not misclassify the PLAINTIFF and the other CALIFORNIA CLASS Members as exempt
24 pursuant to Cal. Lab. Code §§ 510, *et seq.* Absent proof of such a contemporaneous system,
25 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
26 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations, the
27 PLAINTIFF and the other CALIFORNIA CLASS Members are entitled to compel
28 DEFENDANT to provide restitutionary disgorgement of their ill-gotten gains into a fluid fund

1 in order to restitute these funds to the PLAINTIFF and the other CALIFORNIA CLASS
2 Members according to proof.

3 34. All CALIFORNIA CLASS Members who performed and continue to perform work
4 for DEFENDANT in California during the CALIFORNIA CLASS PERIOD are similarly
5 situated in that these employees are subject to DEFENDANT's uniform policy and systematic
6 practice that required these employees to perform work without the compensation as required
7 by law.

8 35. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
9 California law by:

- 10 (a) Violating the California Unfair Competition law, Cal. Bus. & Prof. Code
11 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
12 having in place company policies, practices and procedures that uniformly
13 misclassified the PLAINTIFF and the other CALIFORNIA CLASS
14 Members as exempt;
- 15 (b) Committing an act of unfair competition in violation of the UCL, by
16 unlawfully, unfairly and/or deceptively failing to have in place a company
17 policy, practice and procedure that accurately determined the amount of
18 working time spent by the PLAINTIFF and the other CALIFORNIA
19 CLASS Members performing non-exempt tasks;
- 20 (c) Committing an act of unfair competition in violation of the UCL, by
21 having in place a company policy, practice and procedure that failed to
22 reclassify as non-exempt those members of the CALIFORNIA CLASS
23 whose actual job duties are primarily comprised of non-exempt job tasks;
- 24 (d) Committing an act of unfair competition in violation of the UCL, by
25 misclassifying PLAINTIFF and the members of the CALIFORNIA
26 CLASS as exempt commissioned sales persons and failing to provide
27 overtime compensation for time worked excess of eight (8) hours in a
28 workday and more than forty (40) hours in a workweek; and,

- 1 (e) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with all legally required off-duty meal and rest
4 periods.

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

- 7 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
8 that the joinder of all CALIFORNIA CLASS Members is impracticable
9 and the disposition of their claims as a class will benefit the parties and the
10 Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS and will apply uniformly to every member of the CALIFORNIA
14 CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all other
17 members of the CALIFORNIA CLASS, was initially classified as exempt
18 upon hiring based on the defined corporate policies, practices and
19 procedures and labored under DEFENDANT's systematic policy, practice
20 and procedure that failed to properly classify the PLAINTIFF and the
21 other CALIFORNIA CLASS Members. PLAINTIFF sustained economic
22 injury as a result of DEFENDANT's employment practices. PLAINTIFF
23 and the members of the CALIFORNIA CLASS were and are similarly or
24 identically harmed by the same unlawful, deceptive, unfair and pervasive
25 pattern of misconduct engaged in by the DEFENDANT; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA CLASS, and has retained counsel
28 who are competent and experienced in Class Action litigation. There are

1 no material conflicts between the claims of the representative PLAINTIFF
2 and the members of the CALIFORNIA CLASS that would make class
3 certification inappropriate. Counsel for the CALIFORNIA CLASS will
4 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA CLASS; and/or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be
17 dispositive of interests of the other members not party to the
18 adjudication or substantially impair or impede their ability to
19 protect their interests.

20 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
21 act on grounds generally applicable to the CALIFORNIA CLASS, making
22 appropriate class-wide relief with respect to the CALIFORNIA CLASS
23 as a whole in that the DEFENDANT uniformly classified and treated the
24 CALIFORNIA CLASS Members as exempt and, thereafter, uniformly
25 failed to take proper steps to determine whether the CALIFORNIA
26 CLASS Members were properly classified as exempt, and thereby denied
27 these employees overtime wages as required by law.

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

1 of the CALIFORNIA CLASS sought does not relate exclusively to
2 restitution because through this claim PLAINTIFF seeks
3 declaratory relief holding that the DEFENDANT's policies and
4 practices constitute unfair competition, along with declaratory
5 relief, injunctive relief, and incidental equitable relief as may be
6 necessary to prevent and remedy the conduct declared to constitute
7 unfair competition;

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

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

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

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

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

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

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

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

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

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

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

- 1 (c) The members of the CALIFORNIA CLASS are so numerous that it is
2 impractical to bring all members of the CALIFORNIA CLASS before the
3 Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
5 able to obtain effective and economic legal redress unless the action is
6 maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon
11 the CALIFORNIA CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of the
14 CALIFORNIA CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA CLASS, thereby making final class-wide relief
17 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 18 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
19 the business records of DEFENDANT. The CALIFORNIA CLASS
20 consists of all DEFENDANT's current and former Sales Consultants who
21 were classified as exempt from overtime wages by DEFENDANT and
22 employed by DEFENDANT in California during the CALIFORNIA
23 CLASS PERIOD; and,
- 24 (i) Class treatment provides manageable judicial treatment calculated to bring
25 a efficient and rapid conclusion to all litigation of all wage and hour
26 related claims arising out of the conduct of DEFENDANT as to the
27 members of the CALIFORNIA CLASS.

28 39. DEFENDANT maintains records from which the Court can ascertain and

1 identify by name and job title, each of DEFENDANT's employees who have been subjected to
2 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF
3 will seek leave to amend the complaint to include any additional job titles of similarly situated
4 employees when they have been identified.

5 **THE CALIFORNIA LABOR SUBCLASS**

6 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
7 Causes of Action on behalf of the a California subclass, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed by DEFENDANT as a Premium
9 Sales Consultant or a Senior Sales Consultant who did not sign severance agreements and who
10 did not opt out of the Class Action in California (the "CALIFORNIA LABOR SUBCLASS")
11 from November 24, 2017 to March 19, 2024 (the "CALIFORNIA LABOR SUBCLASS
12 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
13 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
14 (\$5,000,000.00).

15 41. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
16 SUBCLASS against DEFENDANT, the CALIFORNIA LABOR SUBCLASS PERIOD should
17 be adjusted accordingly.

18 42. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
19 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
20 Wage Order Requirements, and the applicable provisions of California law, intentionally,
21 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unlawfully, unfairly and
22 deceptively instituted a practice to ensure that the persons employed in a Sales Consultant
23 position were not properly classified as non-exempt from the requirements of California Labor
24 Code §§ 510, *et seq.*

25 43. All CALIFORNIA LABOR SUBCLASS Members, including the PLAINTIFF,
26 performed the same finite set of tasks and were paid by DEFENDANT according to uniform
27 and systematic company procedures, which, as alleged herein above, failed to pay overtime
28 compensation to PLAINTIFF and other CALIFORNIA LABOR SUBCLASS Members. This

1 business practice was uniformly applied to each and every member of the CALIFORNIA
2 LABOR SUBCLASS, and therefore, the propriety of this conduct can be adjudicated on a class-
3 wide basis.

4 44. The CALIFORNIA LABOR SUBCLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUBCLASS Members is impracticable.

6 45. Common questions of law and fact exist as to members of the CALIFORNIA
7 LABOR SUBCLASS, including, but not limited, to the following:

- 8 (a) Whether DEFENDANT unlawfully failed to pay overtime compensation
9 to members of the CALIFORNIA LABOR SUBCLASS in violation of the
10 California Labor Code and applicable regulations and applicable
11 California Wage Order(s);
- 12 (b) Whether the members of the CALIFORNIA LABOR SUBCLASS are
13 non-exempt employees entitled to overtime compensation for overtime
14 worked under the overtime pay requirements of California Law;
- 15 (c) Whether DEFENDANT's policy and practice of classifying the
16 CALIFORNIA LABOR SUBCLASS Members as exempt from overtime
17 compensation and failing to pay the CALIFORNIA LABOR SUBCLASS
18 Members overtime violates applicable provisions of California law;
- 19 (d) Whether DEFENDANT unlawfully failed to keep and furnish
20 CALIFORNIA LABOR SUBCLASS Members with accurate records of
21 hours worked; and,
- 22 (e) Whether DEFENDANT's conduct was willful.

23 46. DEFENDANT, as a matter of corporate policy, practice and procedure, erroneously
24 classified all Sales Consultants as exempt from overtime wages and other labor laws. All Sales
25 Consultants, including the PLAINTIFF, performed the same finite set of tasks and were paid
26 by DEFENDANT according to uniform and systematic company procedures, which, as alleged
27 herein above, failed to correctly pay overtime compensation. This business practice was
28 uniformly applied to each and every member of the CALIFORNIA LABOR SUBCLASS, and

1 therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

2 47. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS under
3 California law by:

- 4 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
5 failing to pay PLAINTIFF and the members of the CALIFORNIA
6 LABOR SUBCLASS the correct overtime pay for a workday longer than
7 eight (8) hours, a workweek longer than forty (40) hours for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 9 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
12 meal breaks and the legally required off-duty rest breaks;
- 13 (c) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
14 the CALIFORNIA LABOR SUB-CLASS members with necessary
15 expenses incurred in the discharge of their job duties;
- 16 (d) Violating Cal. Lab. Code § 226(a) by failing to provide the PLAINTIFF
17 and the CALIFORNIA LABOR SUBCLASS Members with an accurate
18 itemized statement in writing showing the gross wages earned, the net
19 wages earned, all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the
21 employee; and,
- 22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the employer
24 must pay the employee all wages due without abatement, by failing to
25 tender full payment and/or restitution of wages owed or in the manner
26 required by California law to the members of the CALIFORNIA LABOR
27 SUB-CLASS who have terminated their employment.

28 48. This Class Action meets the statutory prerequisites for the maintenance of a Class

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

- 2 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS are
3 so numerous that the joinder of all CALIFORNIA LABOR SUBCLASS
4 Members is impracticable and the disposition of their claims as a class will
5 benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
7 that are raised in this Complaint are common to the CALIFORNIA
8 LABOR SUBCLASS and will apply uniformly to every member of the
9 CALIFORNIA LABOR SUBCLASS;
- 10 (c) The claims of the representative PLAINTIFF are typical of the claims of
11 each member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF,
12 like all other members of the CALIFORNIA LABOR SUBCLASS, was
13 initially classified as exempt upon hiring based on the defined corporate
14 policies, practices and procedures and labored under DEFENDANT's
15 systematic policy, practice and procedure that failed to properly classify
16 the PLAINTIFF and the other CALIFORNIA LABOR SUBCLASS
17 Members. PLAINTIFF and all other members of the CALIFORNIA
18 LABOR SUBCLASS sustained economic injuries arising from
19 DEFENDANT's violations of the laws of California. PLAINTIFF and the
20 members of the CALIFORNIA LABOR SUBCLASS were and are
21 similarly or identically harmed by the same unlawful, deceptive, unfair
22 and pervasive pattern of misconduct engaged in by the DEFENDANT as
23 described above; and,
- 24 (d) The representative PLAINTIFF will fairly and adequately represent and
25 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
26 retained counsel who are competent and experienced in Class Action
27 litigation. There are no material conflicts between the claims of the
28 representative PLAINTIFF and the members of the CALIFORNIA

1 LABOR SUBCLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
3 assert the claims of all CALIFORNIA LABOR SUBCLASS Members.

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

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

10 1) Inconsistent or varying adjudications with respect to individual
11 members of the CALIFORNIA LABOR SUBCLASS which would
12 establish incompatible standards of conduct for the parties
13 opposing the CALIFORNIA LABOR SUBCLASS; or,

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

19 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted
20 or refused to act on grounds generally applicable to the CALIFORNIA
21 LABOR SUBCLASS, making appropriate class-wide relief with respect
22 to the CALIFORNIA LABOR SUBCLASS as a whole in that the
23 DEFENDANT uniformly classified and treated the CALIFORNIA
24 LABOR SUBCLASS Members as exempt and, thereafter, uniformly
25 failed to take proper steps to determine whether the CALIFORNIA
26 LABOR SUBCLASS Members were properly classified as exempt, and
27 thereby denied these employees overtime wages as required by law;

28 (c) Common questions of law and fact exist as to the members of the

1 CALIFORNIA LABOR SUBCLASS, with respect to the practices and
2 violations of California Law as listed above, and predominate over any
3 question affecting only individual CALIFORNIA LABOR SUBCLASS
4 Members, and a Class Action is superior to other available methods for the
5 fair and efficient adjudication of the controversy, including consideration
6 of:

- 7 1) The interests of the members of the CALIFORNIA LABOR
8 SUBCLASS in individually controlling the prosecution or defense
9 of separate actions in that the substantial expense of individual
10 actions will be avoided to recover the relatively small amount of
11 economic losses sustained by the individual CALIFORNIA
12 LABOR SUBCLASS Members when compared to the substantial
13 expense and burden of individual prosecution of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
- 16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA LABOR
18 SUBCLASS, which would establish incompatible standards
19 of conduct for the DEFENDANT; and/or,
- 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA LABOR SUBCLASS would as a practical
22 matter be dispositive of the interests of the other members
23 not parties to the adjudication or substantially impair or
24 impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUBCLASS Members will
27 avoid asserting their legal rights out of fear of retaliation by
28 DEFENDANT, which may adversely affect an individual's job

1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

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

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

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

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

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

10 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
11 ascertainable from the business records of DEFENDANT. The
12 CALIFORNIA LABOR SUBCLASS consists of those members of the
13 CALIFORNIA CLASS who were subjected to the DEFENDANT's
14 practices as described above during the CALIFORNIA LABOR
15 SUBCLASS PERIOD; and,

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

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

25
26 **JURISDICTION AND VENUE**

27 52. This Court has jurisdiction over this Action pursuant to California Code of
28 Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

1 This Action is brought as a Class Action on behalf of similarly situated employees of
2 DEFENDANT pursuant to California Code of Civil Procedure, Section 382.

3 53. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because PLAINTIFF resides in this County and worked in this County
5 for DEFENDANT, and DEFENDANT (i) currently maintains and at all relevant times
6 maintained offices and facilities in this County and/or conducts substantial business in this
7 County, and (ii) committed the wrongful conduct herein alleged in this County against the
8 PLAINTIFF and members of the CALIFORNIA CLASS and CALIFORNIA LABOR
9 SUBCLASS.

10 **FIRST CAUSE OF ACTION**

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

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

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

14 54. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 47 of this
16 Complaint.
17

18 55. DEFENDANT is a “person” as that term is defined under California Business &
19 Professions Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The
26 court may make such orders or judgments, including the appointment of a
27 receiver, as may be necessary to prevent the use or employment by any
28 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.

1 California Business & Professions Code § 17203.

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

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

15 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
16 fraudulent in that DEFENDANT's uniform policy and practice was to represent to the
17 CALIFORNIA CLASS Members that they were exempt from overtime pay when in fact these
18 representations were false and likely to deceive, for which this Court should issue injunctive and
19 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
20 wrongfully withheld.

21 60. By the conduct alleged herein, DEFENDANT's practices were also unfair and
22 deceptive in that DEFENDANT's employment practices caused the PLAINTIFF and the
23 CALIFORNIA CLASS Members to be underpaid during their employment with
24 DEFENDANT.

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

1 62. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of each
2 CALIFORNIA CLASS member, overtime wages and one (1) hour of pay for each workday in
3 which an off-duty meal period was not timely provided for each five (5) hours of work, and/or
4 one (1) hour of pay for each workday in which a second off-duty meal period was not timely
5 provided for each ten (10) hours of work.

6 63. PLAINTIFF further demands on behalf of himself and on behalf of each
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
8 was not timely provided as required by law.

9 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and
10 fraudulent in that DEFENDANT's uniform policy and practice was to improperly classify as
11 exempt from overtime wages PLAINTIFF, and other members of the CALIFORNIA CLASS,
12 and DEFENDANT's uniform policy and practice also failed to accurately record all time
13 worked, and failed to provide the required amount of overtime compensation due to a systematic
14 misclassification that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
15 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
16 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
17 Prof. Code § 17203, including restitution of wages wrongfully withheld.

18 65. By and through the unlawful and unfair business practices described herein,
19 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and
20 the CALIFORNIA CLASS Members, 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
22 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
23 to unfairly compete against competitors who comply with the law.

24 66. All the acts described herein as violations of, among other things, the California
25 Labor Code, California Code of Regulations, and Industrial Welfare Commission Wage Orders,
26 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 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

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

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS and Against All**
22 **Defendants)**

23 70. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
24 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
25 63 of this Complaint.

26 71. PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANT's failure to correctly classify

1 the CALIFORNIA LABOR SUBCLASS Members as non-exempt employees entitled to
2 overtime wages and other related benefits and therefore compensate these employees for all the
3 time they worked, including their overtime.

4 72. Cal. Lab. Code § 510 states in relevant part:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight
6 hours in one workday and any work in excess of 40 hours in any one
7 workweek and the first eight hours worked on the seventh day of work in
8 any one workweek shall be compensated at the rate of no less than one and
9 one-half times the regular rate of pay for an employee. Any work in excess
10 of 12 hours in one day shall be compensated at the rate of no less than
twice the regular rate of pay for an employee. In addition, any work in
excess of eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of pay of an
employee.

11 73. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor
12 is entitled to one day's rest therefrom in seven."

13 74. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees
14 to work more than six days in seven."

15 75. Cal. Lab. Code § 1194 states:

16 "Notwithstanding any agreement to work for a lesser wage, any employee
17 receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil
action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit."

19 76. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any employee for longer hours
22 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

23 77. DEFENDANT has intentionally and uniformly designated certain employees as
24 "exempt" employees, by their job title alone and without regard to DEFENDANT's realistic
25 expectations and actual overall requirements of the job, including PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUBCLASS who worked on the production side of
27 DEFENDANT's business and who did not exercise independent discretion and judgment as to
28

1 matters of significance to DEFENDANT's business and were not engaged in work of a type that
2 was or now is directly related to management policies or general business operations of the
3 employer's customers, when giving these words a fair but narrow construction. This was done
4 in an illegal attempt to avoid payment of overtime wages and other benefits in violation of the
5 Cal. Lab. Code and Industrial Welfare Commission requirements.

6 78. For an employee to be exempt as a bona fide "commissioned salesperson," all the
7 following criteria must be met and DEFENDANT has the burden of proving that:

- 8 (a) The employee's primary duty must be making sales as defined to include any sale,
9 exchange, contract to sell, consignment sale, shipment for sale, or other disposition;
10 or
11 (b) The employee must obtain orders or contracts for services or for the use of facilities
12 for which a consideration will be paid by the client or customer; and,
13 (c) The employee's earnings must be exceed one and one-half (1 ½) times the
14 minimum wage; and,
15 (d) The employee must earn more than half of their compensation from bona fide sales
16 commissions; and,
17 (e) The employee must be primarily engaged in duties which meet the test of
18 exemption.

19 No member of the CALIFORNIA LABOR SUBCLASS was or is an inside salesperson or
20 commissioned salesperson because they all fail to meet the requirements of being a
21 "commissioned salesperson" within the meaning of the applicable Wage Order.

22 79. For an employee to be exempt as a bona fide "outside salesperson," all the following
23 criteria must be met and DEFENDANT has the burden of proving that:

- 24 (a) The employee's primary duty must be making sales as defined to include any sale,
25 exchange, contract to sell, consignment sale, shipment for sale, or other disposition;
26 or
27 (b) The employee must obtain orders or contracts for services or for the use of facilities
28 for which a consideration will be paid by the client or customer; and,

- 1 (c) The employee must customarily and regularly spend more than half the work time
2 away from the employer's place of business engaged in sales-related activity; and,
3 (d) The employee must be primarily engaged in duties which meet the test of
4 exemption.

5 No member of the CALIFORNIA LABOR SUBCLASS was or is an outside salesperson
6 because they all fail to meet the requirements of being an "outside salesperson" within the
7 meaning of the applicable Wage Order.

8 80. For an employee to be exempt as a bona fide "executive," all the following criteria
9 must be met and DEFENDANT has the burden of proving that:

- 10 (a) The employee's primary duty must be management of the enterprise, or of a
11 customarily recognized department or subdivision; and,
12 (b) The employee must customarily and regularly direct the work of at least two (2) or
13 more other employees; and,
14 (c) The employee must have the authority to hire and fire, or to command particularly
15 serious attention to his or his recommendations on such actions affecting other
16 employees; and,
17 (d) The employee must customarily and regularly exercise discretion and independent
18 judgment; and,
19 (e) The employee must be primarily engaged in duties which meet the test of
20 exemption.

21 No member of the CALIFORNIA LABOR SUBCLASS was or is an executive because they
22 all fail to meet the requirements of being an "executive" within the meaning of Wage Order No.
23 4-2001.

24 81. For an employee to be exempt as a bona fide "administrator," all of the following
25 criteria must be met and DEFENDANT has the burden of proving that:

- 26 (a) The employee must perform office or non-manual work directly related to
27 management policies or general business operation of the employer; and,
28 (b) The employee must customarily and regularly exercise discretion and independent

1 judgment; and,

2 (c) The employee must regularly and directly assist a proprietor or an exempt
3 administrator; or,

4 (d) The employee must perform, under only general supervision, work requiring special
5 training, experience, or knowledge, or,

6 (e) The employee must execute special assignments and tasks under only general
7 supervision; and,

8 (f) The employee must be primarily engaged in duties which meet the test of
9 exemption.

10 No member of the CALIFORNIA LABOR SUBCLASS was or is an administrator because they
11 all fail to meet the requirements for being an “administrator” under Wage Order No. 4-2001.

12 82. The Industrial Welfare Commission, ICW Wage Order 4-2001 and California Labor
13 Code § 515 also set forth the requirements which must be complied with to place an employee
14 in the “professional” exempt category. For an employee to be “exempt” as a bona fide
15 “professional”, all the following criteria must be met and DEFENDANT has the burden of
16 proving that:

17 (a) The employee is primarily engaged in an occupation commonly recognized as a
18 learned or artistic profession. For the purposes of this subsection, “learned or
19 artistic profession” means an employee who is primarily engaged in the
20 performance of:

21 1) Work requiring knowledge of an advanced type in a field or science or
22 learning customarily acquired by a prolonged course of specialized intellectual
23 instruction and study, as distinguished from a general academic education and
24 from an apprenticeship, and from training in the performance of routine mental,
25 manual, or physical processes, or work that is an essential part or necessarily
26 incident to any of the above work; or,

27 2) Work that is original and creative in character in a recognized field of
28 artistic endeavor, and the result of which depends primarily on the

1 invention, imagination or talent of the employee or work that is an
2 essential part of or incident to any of the above work; and,

3 3) Whose work is predominately intellectual and varied in character (as
4 opposed to routine mental, manual, mechanical, or physical work) and is
5 of such character cannot be standardized in relation to a given period of
6 time.

7 (b) The employee must customarily and regularly exercise discretion and independent
8 judgment; and.

9 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
10 state minimum wage for full-time employment.

11 No member of the CALIFORNIA LABOR SUBCLASS was or is a professional because they
12 all fail to meet the requirements of being a “professional” within the meaning of Wage Order
13 No. 4-2001.

14 83. PLAINTIFF, and other members of the CALIFORNIA CLASS and CALIFORNIA
15 LABOR SUBCLASS, do not fit the definition of an exempt executive, administrative, or
16 professional employee because:

17 (a) They did not work as executives or administrators; and,

18 (b) The professional exemption articulated in Wage Order 4-2001, section (1)(A)(3)(h)
19 and California Labor Code § 515, does not apply to PLAINTIFF, nor to the other
20 members of the CALIFORNIA LABOR SUBCLASS, because they do not meet
21 all the applicable requirements to work under the exemption for the reasons set
22 forth above in this Complaint.

23 84. During the CALIFORNIA LABOR SUBCLASS period, the PLAINTIFF, and other
24 members of the CALIFORNIA LABOR SUBCLASS, worked more than eight (8) hours in a
25 workday and in excess of forty (40) hours in a workweek.

26 85. At all relevant times, DEFENDANT failed to pay PLAINTIFF, and other members
27 of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the time they work in
28 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and

1 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR
2 SUBCLASS, were required to work, and did in fact work, overtime.

3 86. By virtue of DEFENDANT's unlawful failure to pay additional compensation to the
4 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, for their
5 overtime worked, the PLAINTIFF, and the other members of the CALIFORNIA LABOR
6 SUBCLASS, have suffered, and will continue to suffer, an economic injury in amounts which
7 are presently unknown to them and which will be ascertained according to proof at trial.

8 87. DEFENDANT knew or should have known that PLAINTIFF, and the other
9 members of the CALIFORNIA LABOR SUBCLASS, are misclassified as exempt from
10 overtime pay and DEFENDANT systematically elected, either through intentional malfeasance
11 or gross nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
12 policy, practice and procedure.

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

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

25 ///

26 ///

27 ///

28 ///

1 **THIRD 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 90. 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 91. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
10 failed 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
13 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
14 duties for the legally required off-duty meal periods. As a result of their rigorous work
15 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
16 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
17 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
19 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
20 and CALIFORNIA LABOR SUB-CLASS Members with a second off-duty meal period from
21 time to time in which these employees were required by DEFENDANT to work ten (10) hours
22 of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
24 DEFENDANT's corporate policy and practice.

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

1 each workday that a meal period was not provided.

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

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

26 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
28 CLASS Members who were not provided a rest period, in accordance with the applicable Wage

1 Order, one additional hour of compensation at each employee's regular rate of pay for each
2 workday that rest period was not provided.

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

7
8 **FIFTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS and Against All**
12 **Defendants)**

13 98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
14 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
15 83 of this Complaint.

16 99. Cal. Labor Code § 226(a) provides that an employer must furnish employees with
17 an "accurate itemized statement in writing showing:

18 (1) gross wages earned,

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

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

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

27 (5) net wages earned,

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

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

8 100. DEFENDANT also failed to provide the PLAINTIFF and other members of the
9 CALIFORNIA LABOR SUB-CLASS with a wage statement in writing that accurately sets
10 forth gross and net wages earned, all applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate by the PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS Members. This conduct violated Cal. Lab. Code §
13 226(a). Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF
14 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
15 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members
16 of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab.
17 Code § 226.

18 101. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
19 226(a), causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
20 SUBCLASS. These damages include, but are not limited to, costs expended calculating the true
21 time worked and the amount of employment taxes and mandatory insurance 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 SUBCLASS
24 may recover liquidated damages of \$50.00 for the initial pay period in which the violation
25 occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code §
26 226(a), in an amount according to proof at the time of trial (but in no event more than \$4,000.00
27 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUBCLASS
28 herein).

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

9
10 **SEVENTH CAUSE OF ACTION**

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

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

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

15 106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 87
17 of this Complaint.

18 107. Cal. Lab. Code § 200 provides that:

19 As used in this article:

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

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

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

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

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72

1 hours thereafter, unless the employee has given 72 hours previous notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages
3 at the time of quitting. Notwithstanding any other provision of law, an employee
4 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.

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

7 111. Cal. Lab. Code § 203 provides:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
10 who is discharged or who quits, the wages of the employee shall continue as a
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.

11 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
12 members has terminated and DEFENDANT has not tendered payment of all wages owed as
13 required by law. DEFENDANT willfully and intentionally failed to pay the unpaid overtime
14 wages alleged herein to the PLAINTIFF and the other members of the CALIFORNIA LABOR
15 SUB-CLASS, in violation of California Labor Code §§ 201 & 202.

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

21 **EIGHTH CAUSE OF ACTION**

22 **Wrongful Termination In Violation of Public Policy**

23 **(By PLAINTIFF Against All Defendants)**

24 114. PLAINTIFF realleges and incorporates by reference, as though fully set forth
25 herein, the prior paragraphs of this Complaint.

26 115. Subsequent to PLAINTIFF's participation in protective activity by complaining
27 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
28

1 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
2 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
3 practices in or around May of 2020, DEFENDANT terminated PLAINTIFF's employment with
4 RESPONDENT in June of 2020. As a result, there is a causal link between the protected
5 activity and DEFENDANT's decision to terminate his employment, which is against public
6 policy.

7 116. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT
8 and was believed to be willing to raise complaints, and DEFENDANT retaliated against him
9 by taking adverse employment actions, including employment termination, against him.

10 117. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
11 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
12 and physical pain and anguish, all to his damage in a sum according to proof.

13 118. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF,
14 PLAINTIFF has suffered general and special damages in sums according to proof.

15 119. DEFENDANT'S misconduct was committed intentionally, in a malicious,
16 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
17 DEFENDANT.

18 19 **NINTH CAUSE OF ACTION**

20 **For Violation of Government Code §12940(a) - Racial Discrimination**

21 **(By PLAINTIFF Against All Defendants)**

22 120. PLAINTIFF realleges and incorporate by this reference, as though fully set
23 forth herein, the prior paragraphs of this Complaint.

24 121. PLAINTIFF was employed by DEFENDANT.

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

26 123. PLAINTIFF was terminated from his employment and/or suffered other
27 adverse employment actions.
28

1 124. PLAINTIFF's race as an African American was a substantial motivating
2 reason(s) for his termination and other adverse employment actions, including termination of
3 his employment in June of 2020.

4 125. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
5 losses in earnings and employment benefits and emotional distress in an amount to be
6 determined according to proof at trial.

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

11 **TENTH CAUSE OF ACTION**

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

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

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

15 127. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
16 1-32, *supra*, as though fully set forth at this point.

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

1 129. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 himself and all individuals who are or previously were employed by DEFENDANT as Premium
5 Sales Consultant or a Senior Sales Consultant who did not sign severance agreements
6 (“AGGRIEVED EMPLOYEES”) during the time period of June 19, 2019 to March 19, 2024
7 (the "PAGA PERIOD").

8 130. On June 19, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
9 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
10 the specific provisions of this code alleged to have been violated as required by Labor Code §
11 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
12 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
13 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
14 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

1 Code Private Attorney General Act of 2004 as the representative of the State of California for
2 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.
3

4 **PRAYER FOR RELIEF**
5

6 WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:
8

9 1. On behalf of the CALIFORNIA CLASS:

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

20 2. On behalf of the CALIFORNIA LABOR SUBCLASS:

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

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
6
7 D) The wages of all terminated employees from the CALIFORNIA LABOR
8 SUBCLASS as a penalty from the due date thereof at the same rate until paid or
9 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
10
11 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order; and
13
14 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
15 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
16 costs of suit.
17
18 3. On behalf of the Eighth and Ninth Causes of Action:
19
20 A) For all special damages which were sustained as a result of DEFENDANT's
21 conduct, including, but not limited to, back pay, front pay, lost compensation and
22 job benefits that PLAINTIFF would have received but for the retaliatory practices
23 of DEFENDANT; and,
24
25 B) For all exemplary damages, according to proof, which were sustained as a result
26 of DEFENDANT's conduct.
27
28 4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
A) Recovery of civil penalties as prescribed by the Labor Code Private
Attorneys General Act of 2004; and,
B) An award of attorneys' fees and cost of suit, as allowable under the
law, including, but not limited to, pursuant to Labor Code §2699.
5. On all claims:
A) An award of interest, including prejudgment interest at the legal rate;

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
4 §2802.
5

6 Dated: June 05, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

7
8 By: /s/ Nicholas J. De Blouw
9

10 Nicholas J. De Blouw
11 Norman B. Blumenthal
12 Attorneys for Plaintiff
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