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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

MARIO FERNANDEZ, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

NUVISION FEDERAL CREDIT UNION, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2020-01161691-CU-OE-CJC

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

Assigned for All Purposes
Judge Walter Schwarm

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

6 **INTRODUCTION**

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

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

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

23 **THE PARTIES**

24 4. Defendant Nuvision Federal Credit Union (“DEFENDANT”) is a corporation that
25 at all relevant times mentioned herein conducted and continues to conduct substantial business
26 in the state of California.

27 5. DEFENDANT provides financial services. The Company offers home banking,
28

1 bill payment services, card services, automatic transfer, savings, Ira, and trust accounts, as well
2 as vehicle, real estate, and personal loans.

3 6. PLAINTIFF was employed by DEFENDANT in California from May of 2019
4 to November of 2019 and was at all times classified by DEFENDANT as a non-exempt
5 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
6 payment of minimum and overtime wages due for all time worked.

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

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

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

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

11 THE CONDUCT

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13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
19 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
20 was from time to time interrupted by work assignments while clocked out for what should have
21 been PLAINTIFF's off-duty meal break. Additionally, DEFENDANT intentionally and
22 unlawfully failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for compensable
23 work time which was spent logging onto computers, logging onto the virtual private networks,
24 initializing software applications, and preparing to take and/or make phone calls. This is due
25 to the fact that DEFENDANT had in place two conflicting policies and practices. On the one
26 hand, these employees were not paid until the start of their scheduled shifts and on the other
27 hand, these employees were required to work before the start of their scheduled shifts preparing
28 their computer systems because it was a requirement for the employees to properly perform the

1 functions of their jobs. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES who
2 performed this job duty worked off the clock before the start of their scheduled shifts because
3 this preparation was indispensable to performing their jobs. This additional time spent
4 preparing computer systems before the start of their scheduled shifts was work performed
5 subject to DEFENDANT's control and for DEFENDANT's benefit. Consequently, all time
6 spent performing such work constitutes "hours worked" and is therefore compensable.
7 DEFENDANT's policy and practice to not pay employees for compensable work time is
8 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES forfeited minimum wage, overtime wage compensation, and meal
10 break wages, by working without their time being correctly recorded and without compensation
11 at the applicable rates.

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

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

1 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
2 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
3 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
4 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
5 to provide employees with off-duty rest periods, which the California Supreme Court defined
6 as time during which an employee is relieved from all work related duties and free from
7 employer control. In so doing, the Court held that the requirement under California law that
8 employers authorize and permit all employees to take rest period means that employers must
9 relieve employees of all duties and relinquish control over how employees spend their time
10 which includes control over the locations where employees may take their rest period.
11 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
12 minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted PLAINTIFF
13 and other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
14 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
15 leave the work premises during their rest period.

16 14. State and federal law provide that employees must be paid overtime at one-and-
17 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
18 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
19 employee's performance.

20 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
21 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
22 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
23 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
24 hourly basis with incentive compensation when the employees met the various performance
25 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
26 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
27 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
28 of calculating overtime pay. Management and supervisors described the incentive program to

1 potential and new employees as part of the compensation package. As a matter of law, the
2 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
3 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
4 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
5 DEFENDANT.

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

16 17. In the course of their employment PLAINTIFF and other AGGRIEVED
17 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
18 cellular phones as a result of and in furtherance of their job duties as employees for
19 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
20 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
21 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
23 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
24 for the benefit of DEFENDANT.

25 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
26 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
27 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
28 provides that every employer shall furnish each of his or her employees with an accurate

1 itemized wage statement in writing showing, among other things, gross wages earned and all
2 applicable hourly rates in effect during the pay period and the corresponding amount of time
3 worked at each hourly rate. Additionally, DEFENDANT violated Cal. Lab. Code Section
4 226(8) by failing to list the correct legal entity that was the employer of PLAINTIFF. Aside,
5 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
6 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
7 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
8 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

26 21. All of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
28 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that

1 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
2 AJDAR 12157 (Certified for Publication 12/19/18).

3
4 **JURISDICTION AND VENUE**

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 26. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to
4 himself and all individuals who are or previously were employed by DEFENDANT in
5 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
6 during the time period of June 18, 2019 until a date as determined by the Court (the "PAGA
7 PERIOD").

8 27. On June 18, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
9 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
10 the specific provisions of this code alleged to have been violated as required by Labor Code §
11 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
12 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
13 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
14 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
15 to all AGGRIEVED EMPLOYEES as herein defined.

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

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

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

4
5 **PRAYER FOR RELIEF**

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

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

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

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

14 Dated: September 23, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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17 By: /s/ Norman Blumenthal
18 Norman B. Blumenthal
19 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

June 18, 2020

CA2075

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Nuvision Federal Credit Union
Certified Mail #70191120000066524714
7812 Edinger Ave.
Huntington Beach, CA 92647

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Nuvision Federal Credit Union in California and classified as non-exempt employees during the time period of June 18, 2019 until a date as determined by the Court. Our offices represent Plaintiff Mario Fernandez (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Nuvision Federal Credit Union (“Defendant”). Plaintiff was employed by Defendant as a California Senior Collector from May of 2019 to November of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

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

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

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

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

9
10 MARIO FERNANDEZ, an individual, on
behalf of himself and on behalf of all
11 persons similarly situated,

12
13 Plaintiff,

14 vs.

15 NUVISION FEDERAL CREDIT UNION,
a Corporation; and DOES 1 through 50,
16 inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Nuvision Federal Credit Union (“DEFENDANT”) is a corporation that
7 at all relevant times mentioned herein conducted and continues to conduct substantial business
8 in the state of California.

9 2. DEFENDANT provides financial services. The Company offers home banking,
10 bill payment services, card services, automatic transfer, savings, Ira, and trust accounts, as well
11 as vehicle, real estate, and personal loans.

12 3. PLAINTIFF was employed by DEFENDANT in California from May of 2019 to
13 November of 2019 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 24 **THE CONDUCT**

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
5 should have been PLAINTIFF's off-duty meal break. Additionally, DEFENDANT intentionally
6 and unlawfully failed to pay PLAINTIFF and the CALIFORNIA CLASS Members for
7 compensable work time which was spent logging onto computers, logging onto the virtual
8 private networks, initializing software applications, and preparing to take and/or make phone
9 calls. This is due to the fact that DEFENDANT had in place two conflicting policies and
10 practices. On the one hand, these employees were not paid until the start of their scheduled
11 shifts and on the other hand, these employees were required to work before the start of their
12 scheduled shifts preparing their computer systems because it was a requirement for the
13 employees to properly perform the functions of their jobs. As a result, PLAINTIFF and the
14 CALIFORNIA CLASS Members who performed this job duty worked off the clock before the
15 start of their scheduled shifts because this preparation was indispensable to performing their
16 jobs. This additional time spent preparing computer systems before the start of their scheduled
17 shifts was work performed subject to DEFENDANT's control and for DEFENDANT's benefit.
18 Consequently, all time spent performing such work constitutes "hours worked" and is therefore
19 compensable. DEFENDANT's policy and practice to not pay employees for compensable work
20 time is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other
21 CALIFORNIA CLASS Members forfeited minimum wage, overtime wage compensation, and
22 meal break wages, by working without their time being correctly recorded and without
23 compensation at the applicable rates.

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

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

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

28 11. State and federal law provide that employees must be paid overtime at one-and-

1 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
2 Members were compensated at an hourly rate plus incentive pay that was tied to specific
3 elements of an employee’s performance.

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

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

28 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS

1 Members as a business expense, were required by DEFENDANT to use their own personal
2 cellular phones as a result of and in furtherance of their job duties as employees for
3 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
4 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
5 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
6 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
7 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
8 for the benefit of DEFENDANT.

9 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
10 other members of the CALIFORNIA CLASS with complete and accurate wage statements
11 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
12 Code § 226 provides that every employer shall furnish each of his or her employees with an
13 accurate itemized wage statement in writing showing, among other things, gross wages earned
14 and all applicable hourly rates in effect during the pay period and the corresponding amount of
15 time worked at each hourly rate. Additionally, DEFENDANT violated Cal. Lab. Code Section
16 226(8) by failing to list the correct legal entity that was the employer of PLAINTIFF. Aside,
17 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
18 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
19 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

12 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
13 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
14 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
15 did not have a policy or practice which provided timely off-duty meal and rest breaks to
16 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
17 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
18 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
19 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
20 DEFENDANT’s business records. To date, DEFENDANT has yet to pay PLAINTIFF all of
21 his wages due to him and DEFENDANT has failed to pay any penalty wages owed to him under
22 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
23 does not exceed the sum or value of \$75,000.

24 25 **JURISDICTION AND VENUE**

26 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
28 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees

1 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

7
8 **THE CALIFORNIA CLASS**

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

18 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
19 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
20 accordingly.

21 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
22 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
23 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
24 to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS
25 Members, even though DEFENDANT enjoyed the benefit of this work, required employees to
26 perform this work and permits or suffers to permit this work.

27 24. DEFENDANT has the legal burden to establish that each and every
28 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as

1 required by California laws. The DEFENDANT, however, failed to have in place during the
2 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
3 that each and every CALIFORNIA CLASS Member is paid as required by law. This common
4 business practice is applicable to each and every CALIFORNIA CLASS Member can be
5 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
6 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
7 elements of this claim.

8 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 26. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
11 law by:

- 12 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
13 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
14 deceptively having in place company policies, practices and procedures
15 that failed to record and pay PLAINTIFF and the other members of the
16 CALIFORNIA CLASS for all time worked, including minimum wages
17 owed and overtime wages owed for work performed by these employees;
- 18 (b) Committing an act of unfair competition in violation of the UCL, by
19 failing to provide the PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with the legally required meal and rest periods;
21 and,
- 22 (c) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
24 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA CLASS members with necessary expenses incurred in
26 the discharge of their job duties.

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

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition of
3 their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the CALIFORNIA
6 CLASS will apply to every member of the CALIFORNIA CLASS;
- 7 (c) The claims of the representative PLAINTIFF are typical of the claims of
8 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA CLASS, was classified as a non-
10 exempt employee paid on an hourly basis who was subjected to the
11 DEFENDANT's deceptive practice and policy which failed to provide the
12 legally required meal and rest periods to the CALIFORNIA CLASS and
13 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
14 CLASS. PLAINTIFF sustained economic injury as a result of
15 DEFENDANT's employment practices. PLAINTIFF and the members of
16 the CALIFORNIA CLASS were and are similarly or identically harmed
17 by the same unlawful, deceptive and unfair misconduct engaged in by
18 DEFENDANT; and,
- 19 (d) The representative PLAINTIFF will fairly and adequately represent and
20 protect the interest of the CALIFORNIA CLASS, and has retained
21 counsel who are competent and experienced in Class Action litigation.
22 There are no material conflicts between the claims of the representative
23 PLAINTIFF and the members of the CALIFORNIA CLASS that would
24 make class certification inappropriate. Counsel for the CALIFORNIA
25 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
26 Members.

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS
17 as a whole in that DEFENDANT failed to pay all wages due to members
18 of the CALIFORNIA CLASS as required by law;
- 19 1) With respect to the First Cause of Action, the final relief on behalf
20 of the CALIFORNIA CLASS sought does not relate exclusively to
21 restitution because through this claim PLAINTIFF seeks
22 declaratory relief holding that the DEFENDANT's policy and
23 practices constitute unfair competition, along with declaratory
24 relief, injunctive relief, and incidental equitable relief as may be
25 necessary to prevent and remedy the conduct declared to constitute
26 unfair competition;
- 27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question
2 affecting only individual CALIFORNIA CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

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

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

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

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

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

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

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

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

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally applicable
5 to the CALIFORNIA CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 7 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
8 the business records of DEFENDANT; and,
- 9 (i) Class treatment provides manageable judicial treatment calculated to bring
10 a efficient and rapid conclusion to all litigation of all wage and hour
11 related claims arising out of the conduct of DEFENDANT as to the
12 members of the CALIFORNIA CLASS.

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

18
19 **THE CALIFORNIA LABOR SUB-CLASS**

20 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
21 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
22 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
23 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
24 to the filing of the complaint and ending on the date as determined by the Court (the
25 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
26 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
27 Members is under five million dollars (\$5,000,000.00).

28 32. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare

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

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

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

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

- 21 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
22 compensation due to members of the CALIFORNIA LABOR SUB-
23 CLASS for missed meal and rest breaks in violation of the California
24 Labor Code and California regulations and the applicable California Wage
25 Order;
- 26 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS with accurate
28 itemized wage statements;

- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR

1 SUB-CLASS who have terminated their employment; and,

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

5 37. 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 LABOR SUB-CLASS are
8 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
9 Members is impracticable and the disposition of their claims as a class
10 will benefit the parties and the 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 LABOR SUB-CLASS and will apply to every member of the
14 CALIFORNIA LABOR SUB-CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
17 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
18 was a non-exempt employee paid on an hourly basis who was subjected
19 to the DEFENDANT's practice and policy which failed to pay the correct
20 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
21 PLAINTIFF sustained economic injury as a result of DEFENDANT's
22 employment practices. PLAINTIFF and the members of the
23 CALIFORNIA LABOR SUB-CLASS were and are similarly or
24 identically harmed by the same unlawful, deceptive and unfair
25 misconduct engaged in by DEFENDANT; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
28 retained counsel who are competent and experienced in Class Action

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

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

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

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

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

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

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

1 CALIFORNIA LABOR SUB-CLASS, 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 SUB-CLASS
4 Members, and a Class Action is superior to other available methods for
5 the fair and efficient adjudication of the controversy, including
6 consideration of:

- 7 1) The interests of the members of the CALIFORNIA LABOR SUB-
8 CLASS in individually controlling the prosecution or defense of
9 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 SUB-CLASS 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 SUB-
18 CLASS, which would establish incompatible standards of
19 conduct for the DEFENDANT; and/or,
 - 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS 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 SUB-CLASS 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
5 and efficient adjudication of this litigation because class treatment
6 will obviate the need for unduly and unnecessary duplicative
7 litigation that is likely to result in the absence of certification of
8 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR
12 SUB-CLASS predominate over any question affecting only individual
13 CALIFORNIA LABOR SUB-CLASS 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 SUB-CLASS because in the context of employment litigation a
17 substantial number of individual CALIFORNIA LABOR SUB-CLASS
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 SUB-CLASS are so
21 numerous that it is impractical to bring all members of the CALIFORNIA
22 LABOR SUB-CLASS before the Court;
- 23 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
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 SUB-CLASS;

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
5 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

10 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
11 ascertainable from the business records of DEFENDANT. The
12 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
13 CLASS Members who worked for DEFENDANT in California at any
14 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

19
20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

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

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

27 41. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
28 Code § 17021.

1 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
3 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
4 competition as follows:

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

9 Cal. Bus. & Prof. Code § 17203.

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

18 44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
19 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
20 unscrupulous or substantially injurious to employees, and were without valid justification or
21 utility for which this Court should issue equitable and injunctive relief pursuant to Section
22 17203 of the California Business & Professions Code, including restitution of wages wrongfully
23 withheld.

24 45. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated
26 meal and rest periods, the required amount of compensation for missed meal and rest periods
27 and overtime and minimum wages owed, failed to timely pay wages, and failed to pay reporting
28 time wages owed, due to a business practice that cannot be justified, pursuant to the applicable

1 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code
2 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
3 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

8 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
9 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
10 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
11 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

26 51. All the acts described herein as violations of, among other things, the Industrial
27 Welfare Commission Wage Orders, the California Code of Regulations, and the California
28 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,

1 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
2 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **For Failure To Pay Minimum Wages**

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

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

24 **and Against All Defendants)**

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

28 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

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

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

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

12 60. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
14 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS.

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

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

27 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

2 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
3 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
4 Members to work without paying them for all the time they were under DEFENDANT's control.
5 During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
7 were entitled to, constituting a failure to pay all earned wages.

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

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

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

28 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

11 12 **THIRD CAUSE OF ACTION**

13 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

28 72. Cal. Lab. Code § 510 further provides that employees in California shall not be

1 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
2 unless they receive additional compensation beyond their regular wages in amounts specified
3 by law.

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

8 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
11 including overtime work.

12 75. DEFENDANT's unlawful wage and hour practices manifested, without
13 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
14 implementing a policy and practice that failed to accurately record overtime worked by
15 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
16 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
18 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
19 workweek.

20 76. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
24 of the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

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

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

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

12 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
13 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
14 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
15 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
16 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
17 failed to accurately record and pay as evidenced by DEFENDANT's business records and
18 witnessed by employees.

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

25 82. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
27 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
28 to not pay employees for their labor as a matter of company policy, practice and procedure, and

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

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

27 85. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
28

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

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

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

24 88. As a proximate result of the aforementioned violations, PLAINTIFF and
25 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
26 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
27 suit.
28

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

1
2 **SIXTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 226]**

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

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

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

- 12 (1) gross wages earned,
13 (2) total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of
15 overtime under subdivision (a) of Section 515 or any applicable order of the
16 Industrial Welfare Commission,
17 (3) the number of piecerate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item,
21 (5) net wages earned,
22 (6) the inclusive dates of the period for which the employee is paid,
23 (7) the name of the employee and his or her social security number, except that by
24 January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on
26 the itemized statement,
27 (8) the name and address of the legal entity that is the employer, and
28 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

95. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and
the corresponding amount of time worked at each hourly rate. Additionally, DEFENDANT

1 violated Cal. Lab. Code Section 226(8) by failing to list the correct legal entity that was the
2 employer of PLAINTIFF. Aside, from the violations listed above in this paragraph,
3 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
4 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
5 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
6 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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25 **SEVENTH CAUSE OF ACTION**

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

27 **[Cal. Lab. Code § 2802]**

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

Defendants)

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

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

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

99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

100. PLAINTIFF therefore demands reimbursement for expenditures or losses

1 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
2 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
3 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

4
5 **EIGHTH CAUSE OF ACTION**

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

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

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

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

13 102. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

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

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

24 If an employee not having a written contract for a definite period quits his or
her employment, his or her wages shall become due and payable not later than
25 72 hours thereafter, unless the employee has given 72 hours previous notice of
his or her intention to quit, in which case the employee is entitled to his or her
26 wages at the time of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be entitled to
27 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
28 purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

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

106. Cal. Lab. Code § 203 provides:

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

107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

27 3. On all claims:

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

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

Dated: June 18, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
 LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 18, 2020
LLP

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff