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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CECILLE SARMIENTO, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CADUCEUS HEALTHCARE INC., a
Corporation; and Does 1 through 50,
Inclusive;

Defendants.

Case No. 37-2021-00002597-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; ,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF CAL. LAB. CODE § 204(a);
10. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Caduceus Healthcare Inc. (“DEFENDANT”) is a Corporation that at
7 all relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT is a staffing and recruiting firm that provides Medical (Physicians,
10 Nurses, Ancillary), IT, Scientific, and Administrative Services

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from February 3, 2020 to April 30,
13 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
14 a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages.

16 4. PLAINTIFF brings this Class Action on behalf of herself 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 on the date four (4) years prior to the filing of this Complaint and ending on
20 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
21 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
22 dollars (\$5,000,000.00).

23 5. PLAINTIFF brings this Class Action on behalf of herself 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 for all their overtime worked. DEFENDANT’s
27 policy and practice alleged herein is an unlawful, unfair and deceptive business practice
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1 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
2 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
3 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
4 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
5 who have been economically injured by DEFENDANT's past and current unlawful conduct,
6 and all other appropriate legal and equitable relief.

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

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

24 THE CONDUCT

25
26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
27 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
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1 CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally
2 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
4 correct compensation. Further, PLAINTIFF and other members of the CALIFORNIA CLASS
5 from time to time were not paid wages for all time worked, including overtime wages, such that
6 in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
7 practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and the
8 other members of the CALIFORNIA CLASS forfeited wages due them for working without
9 compensation at the correct minimum wage and overtime rates. DEFENDANT's policy and
10 practice to not pay the members of the CALIFORNIA CLASS the correct compensation for all
11 time worked in accordance with applicable law is evidenced by DEFENDANT's business
12 records. This policy and practice of DEFENDANT was intended to purposefully avoid the
13 payment of the correct compensation as required by California law which allowed
14 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
15 with the law.

16 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
18 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
20 all time worked, meaning the time during which an employee was subject to the control of an
21 employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. Specifically, DEFENDANT required
24 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
25 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
26 were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
27 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation
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1 by working without their time being accurately recorded and without compensation at the
2 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
3 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
4 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

5 10. State and federal law provides that employees must be paid overtime at one-and-
6 one-half times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS
7 Members were compensated at an hourly rate plus incentive pay that was tied to specific
8 elements of an employee’s performance.

9 11. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
10 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
11 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
12 performance for DEFENDANT. The non-discretionary incentive program provided all
13 employees paid on an hourly basis with incentive compensation when the employees met the
14 various performance goals set by DEFENDANT. However, when calculating the regular rate
15 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
16 DEFENDANT failed to include the incentive compensation as part of the employees’ “regular
17 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
18 the incentive program to potential and new employees as part of the compensation package.
19 DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA CLASS
20 Members by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF and
21 other non-exempt employees regularly earn non-discretionary remuneration, including but not
22 limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
23 rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
24 Members at their base rates of pay. As a matter of law, the incentive compensation received by
25 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular rate
26 of pay.” The failure to do so has resulted in a underpayment of overtime compensation to
27 PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

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

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

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

17 15. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
18 her employees with an accurate itemized wage statement in writing showing, among other
19 things, gross wages earned and all applicable hourly rates in effect during the pay period and
20 the corresponding amount of time worked at each hourly rate. DEFENDANT from time to
21 time failed to provide to PLAINTIFF and the CALIFORNIA CLASS wage statements that
22 identify the correct gross and net wages earned, the applicable number of hours worked and
23 rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed
24 to issue to PLAINTIFF and other CALIFORNIA CLASS members an itemized wage
25 statement that lists all the requirements under California Labor Code 226 *et seq.*

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

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

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

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

4 20. On or around April 15, 2020, and continuing throughout the rest of
5 PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
6 DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited
7 to, DEFENDANT's failure to properly follow and pay PLAINTIFF sick leave under the
8 Families First Coronavirus Response Act during the Covid-19 pandemic.

9 21. Subsequent to PLAINTIFF's participation in protective activity by
10 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
11 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
12 PLAINTIFF. Specifically, after PLAINTIFF complained to her supervisor(s) of
13 DEFENDANT's unlawful employment practices in April of 2020, DEFENDANT
14 terminated PLAINTIFF's employment with DEFENDANT on April 30, 2020. As a result,
15 there is a causal link between the protected activity and DEFENDANT's decision to
16 terminate her employment, which is against public policy.

17 18 **JURISDICTION AND VENUE**

19 22. This Court has jurisdiction over this Action pursuant to California Code of
20 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
21 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
22 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

23 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant
25 times maintained offices and facilities in this County and/or conducts substantial business in
26 this County, and (ii) committed the wrongful conduct herein alleged in this County against
27 members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

1 **THE CALIFORNIA CLASS**

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

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

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

1 27. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
2 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
3 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
4 failed to correctly calculate and record overtime compensation for overtime worked by
5 PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
6 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
7 and permitted or suffered to permit this overtime work.

8 28. DEFENDANT has the legal burden to establish that each and every
9 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
10 accurately calculate the “regular rate of pay” by including the incentive compensation that
11 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT.
12 DEFENDANT, however, as a matter of policy and procedure failed to have in place during
13 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
14 ensure that each and every CALIFORNIA CLASS Member is paid the applicable overtime
15 rate for all overtime worked, so as to satisfy their burden. This common business practice
16 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
17 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
18 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
19 claim.

20 29. At no time during the CALIFORNIA CLASS PERIOD was the compensation
21 for any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
22 employee for all overtime worked at the applicable rate, as required by California Labor
23 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was
24 the overtime compensation for any member of the CALIFORNIA CLASS properly
25 recalculated so as to include all earnings in the overtime compensation calculation as
26 required by California Labor Code §§ 510, *et seq.*

27 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
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1 CLASS Members is impracticable.

2 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under
3 California law by:

- 4 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
5 Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
6 having in place company policies, practices and procedures that failed
7 to pay all minimum and overtime wages due the CALIFORNIA
8 CLASS for all time worked, and failed to accurately record the
9 applicable rates of all overtime worked by the CALIFORNIA CLASS;
- 10 (b) Committing an act of unfair competition in violation of the California
11 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
12 unlawfully, unfairly, and/or deceptively having in place a company
13 policy, practice and procedure that failed to correctly calculate overtime
14 compensation due to PLAINTIFF and the members of the
15 CALIFORNIA CLASS;
- 16 (c) Committing an act of unfair competition in violation of the California
17 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
18 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
19 *seq.*, by failing to pay the correct federal overtime wages to the
20 PLAINTIFF and the members of the CALIFORNIA CLASS as legally
21 required by the FLSA, and retaining the unpaid federal overtime to the
22 benefit of DEFENDANT.;
- 23 (d) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
25 failing to provide mandatory meal and/or rest breaks to PLAINTIFF
26 and the CALIFORNIA CLASS members; and,
- 27 (e) Committing an act of unfair competition in violation of the California
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1 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
2 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
3 and the CALIFORNIA CLASS members with necessary expenses
4 incurred in the discharge of their job duties.

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

- 7 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
8 that the joinder of all such persons is impracticable and the disposition
9 of their claims as a class will benefit the parties and the Court;
- 10 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
11 issues that are raised in this Complaint are common to the
12 CALIFORNIA CLASS will apply to every member of the
13 CALIFORNIA CLASS;
- 14 (c) The claims of the representative PLAINTIFF are typical of the claims
15 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
16 the other members of the CALIFORNIA CLASS, was subjected to the
17 employment practices of DEFENDANT and was a non-exempt
18 employee paid on an hourly basis and paid additional non-discretionary
19 incentive wages who was subjected to the DEFENDANT's practice and
20 policy which fails to pay the correct rate of overtime wages due to the
21 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
22 CLASS and thereby underpays overtime compensation to the
23 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
24 result of DEFENDANT's employment practices. PLAINTIFF and the
25 members of the CALIFORNIA CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive and unfair
27 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA CLASS, which
28

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA CLASS would as a practical matter be
5 dispositive of the interests of the other members not
6 parties to the adjudication or substantially impair or
7 impede their ability to protect their interests;

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair
28

1 and efficient adjudication of the claims of the members of the
2 CALIFORNIA CLASS because in the context of employment litigation
3 a substantial number of individual CALIFORNIA CLASS Members
4 will avoid asserting their rights individually out of fear of retaliation or
5 adverse impact on their employment;

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

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

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

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

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

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

26 (i) Class treatment provides manageable judicial treatment calculated to
27 bring a efficient and rapid conclusion to all litigation of all wage and
28

1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA CLASS.

3 35. DEFENDANT maintains records from which the Court can ascertain and
4 identify by job title each of DEFENDANT's employees who as have been intentionally
5 subjected to DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to
6 amend the Complaint to include any additional job titles of similarly situated employees
7 when they have been identified.

8
9 **THE CALIFORNIA LABOR SUB-CLASS**

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

18 37. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
21 failed to correctly calculate overtime compensation for the overtime worked by PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS, even though
23 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
24 and permitted or suffered to permit this overtime work. DEFENDANT has denied these
25 CALIFORNIA LABOR SUB-CLASS Members overtime wages at the correct amount to
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
28

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

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

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

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

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 overtime compensation to members of the CALIFORNIA LABOR
14 SUB-CLASS in violation of the California Labor Code and California
15 regulations and the applicable California Wage Order;
- 16 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
17 entitled to overtime compensation for overtime worked under the
18 overtime pay requirements of California law;
- 19 (c) Whether DEFENDANT failed to accurately record the applicable
20 overtime rates for all overtime worked PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS;
- 22 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS with legally
24 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 25 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with accurate
27 itemized wage statements;

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

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

42. 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 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- (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 §§ 226.7 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 rest breaks; and,

- 1 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
2 the members of the CALIFORNIA LABOR SUB-CLASS with an
3 accurate itemized statement in writing showing all accurate and
4 applicable overtime rates in effect during the pay period and the
5 corresponding amount of time worked at each overtime rate by the
6 employee;
- 7 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
8 and the CALIFORNIA LABOR SUB-CLASS members with necessary
9 expenses incurred in the discharge of their job duties; and,
- 10 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
11 when an employee is discharged or quits from employment, the
12 employer must pay the employee all wages due without abatement, by
13 failing to tender full payment and/or restitution of wages owed or in the
14 manner required by California law to the members of the
15 CALIFORNIA LABOR SUB-CLASS who have terminated their
16 employment.

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

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

1 of each member of the CALIFORNIA LABOR SUB-CLASS.

2 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
3 SUB-CLASS, was a non-exempt employee paid on an hourly basis and
4 paid additional non-discretionary incentive wages who was subjected to
5 the DEFENDANT's practice and policy which failed to pay the correct
6 rate of overtime wages due to the CALIFORNIA LABOR SUB-
7 CLASS for all overtime worked. PLAINTIFF sustained economic
8 injury as a result of DEFENDANT's employment practices.

9 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
10 CLASS were and are similarly or identically harmed by the same
11 unlawful, deceptive and unfair misconduct engaged in by
12 DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

23 4) A class action is superior to other available methods for the fair
24 and efficient adjudication of this litigation because class
25 treatment will obviate the need for unduly and unnecessary
26 duplicative litigation that is likely to result in the absence of
27 certification of this action pursuant to Cal. Code of Civ. Proc. §
28

382.

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

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

- 1 (g) DEFENDANT has acted or refused to act on grounds generally
2 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
3 making final class-wide relief appropriate with respect to the
4 CALIFORNIA LABOR SUB-CLASS as a whole;
- 5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
6 ascertainable from the business records of DEFENDANT. The
7 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
8 CLASS Members classified as non-exempt employees during the
9 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring a efficient and rapid conclusion to all litigation of all wage and
12 hour related claims arising out of the conduct of DEFENDANT as to
13 the members of the CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

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

24 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
25 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
26 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
27 competition as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair
2 competition may be enjoined in any court of competent jurisdiction. The court
3 may make such orders or judgments, including the appointment of a receiver, as
4 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.

5 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

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

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

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

27 62. 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 the applicable rates for all overtime worked by PLAINTIFF and other
4 members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly
5 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked,
6 including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in
7 any workweek.

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

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

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

18 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
19 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
20 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
21 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
23 amount of overtime worked and correct applicable overtime rate for the amount of overtime
24 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
25 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
27 failed to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

27 72. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
28

1 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
2 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
3 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
5 to accurately record and pay using the applicable overtime rate as evidenced by
6 DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

12
13 **THIRD CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

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

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

17 **and Against All Defendants)**

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

21 78. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 bring a claim for DEFENDANT’S willful and intentional violations of the California Labor
23 Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to
24 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
25 CALIFORNIA CLASS Members.

26 79. 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.

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

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

6 82. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
8 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS.

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

15 84. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately calculated the correct time worked and consequently underpaid the actual time
17 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
18 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
19 benefits in violation of the California Labor Code, the Industrial Welfare Commission
20 requirements and other applicable laws and regulations.

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

24 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
28

1 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
2 were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

7
8 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

14
15 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

16 17 **SIXTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 226]**

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

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

25 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
26 an "accurate itemized" statement in writing showing:

27 (1) gross wages earned,

- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (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.

101. 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. DEFENDANT from time to time failed to provide to PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS wage statements that identify the correct gross and net wages earned, the applicable number of hours worked and rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS members an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

102. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

103. 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.

104. 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.

105. 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-

1 CLASS members for expenses which included, but were not limited to, costs related to using
2 their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically,
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by
4 DEFENDANT to use their personal cellular phones in order to perform work related job tasks.
5 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA
6 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
7 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
8 These expenses were necessary to complete their principal job duties. DEFENDANT is
9 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these
10 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR
11 SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
12 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required
13 to do under the laws and regulations of California.

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

18
19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

27 108. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

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

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

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

112. 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.

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

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

costs as allowed by law.

NINTH CAUSE OF ACTION

For Failure to Timely Pay Wages

[Cal. Lab. Code §§ 204(a) and 210]

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

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

116. Cal. Lab. Code § 204 provides:

All wages. . .earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

117. Cal. Lab. Code § 204(a) provides:

Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

118. Cal. Lab. Code § 210 provides:

[I]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections. . .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

119. DEFENDANT from time to time failed to pay PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS Members in accordance with Cal. Lab. Code § 204(a).

120. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of one hundred dollars (\$100.00) for the initial pay period in which the violation occurred, and two hundred dollars (\$200.00) for each

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 210, in an amount according
2 to proof at the time of trial.

3
4 **TENTH CAUSE OF ACTION**

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

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

7 121. PLAINTIFF realleges and incorporates by reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 122. Subsequent to PLAINTIFF's participation in protective activity by complaining
10 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
11 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
12 after PLAINTIFF complained to her supervisor(s) of DEFENDANT's unlawful employment
13 practices on or around April 15, 2020, DEFENDANT terminated PLAINTIFF's employment
14 with DEFENDANT in late April of 2020. As a result, there is a causal link between the
15 protected activity and DEFENDANT's decision to terminate her employment, which is against
16 public policy.

17 123. PLAINTIFF raised complaints of illegality while she worked for DEFENDANT
18 and was believed to be willing to raise complaints, and DEFENDANT retaliated against her by
19 taking adverse employment actions, including employment termination, against her.

20 124. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
21 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
22 and physical pain and anguish, all to her damage in a sum according to proof.

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

25 126. DEFENDANT'S misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
27 DEFENDANT.

1 **ELEVENTH CAUSE OF ACTION**

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

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

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

5 127. PLAINTIFF realleges and incorporates by reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

17 129. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to
20 herself and all individuals who worked for DEFENDANT in California and were classified as
21 non-exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of June 18,
22 2019 until a date as determined by the Court (the "PAGA PERIOD").

23 130. On June 18, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
24 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
25 the specific provisions of this code alleged to have been violated as required by Labor Code §
26 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
27 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
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1 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
2 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 131. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
7 to pay minimum wages, (e) failed to provide wages when due, (f) failed to reimburse
8 employees for required expenses, and (g) failed to timely pay earned wages, all in violation of
9 the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*,
10 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
11 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
12 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
13 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
14 Attorney General Act of 2004 as the representative of the State of California for the illegal
15 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 132. All of the conduct and violations alleged herein occurred during the
17 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
18 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
19 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
20 2018 AJDAR 12157 (Certified for Publication 12/19/18).

21
22 **PRAYER FOR RELIEF**

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

25 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
13 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
14 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for overtime compensation due PLAINTIFF and the other members of
17 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
18 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
19 C) Meal and rest period compensation pursuant to California Labor Code Section
20 226.7 and the applicable IWC Wage Order;
21 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
22 in which a violation occurs and one hundred dollars (\$100) per each member of
23 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
24 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
25 an award of costs for violation of Cal. Lab. Code § 226;
26 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
27 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
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costs of suit;

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

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

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code § 210.

3. On behalf of PLAINTIFF for the Tenth cause of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

5. On all claims:

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

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

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
3 §2802.
4

5 Dated: January 20, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
6

7 By: /s/ Norman Blumenthal
8 Norman B. Blumenthal
9 Attorneys for Plaintiff
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Dated: January 20, 2021 BLUMENTHAL NORDREHAUG BHOWMIKDE BLOUW LLP

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