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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 09 2020

I. SIRACUSA

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF RIVERSIDE**OSCAR NOGUERA, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

METAL CONTAINER CORPORATION,
a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **RIC 2004156****REPRESENTATIVE ACTION**
COMPLAINT FOR:1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

FAXED

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

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant METAL CONTAINER
9 CORPORATION (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties
10 for himself, and on behalf of all current and former aggrieved employees that worked for
11 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
12 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
13 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
14 damages for those violations, but simply the civil penalties permitted by California Labor Code
15 § 2699.

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

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

24 25 THE PARTIES

26 4. Defendant Metal Container Corporation (“DEFENDANT”) is a corporation that
27 at all relevant times mentioned herein conducted and continues to conduct substantial business
28 in the state of California.

1 5. DEFENDANT manufactures metal cans. The Company supplies lids, cans,
2 bottles, and other packaging materials. DEFENDANT serves breweries soft drink companies.

3 6. PLAINTIFF was employed by DEFENDANT in California from January of 2008
4 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
5 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
6 of minimum and overtime wages due for all time worked.

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

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

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

1 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
2 responsible in some manner for one or more of the events and happenings that proximately
3 caused the injuries and damages hereinafter alleged.

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

12 13 **THE CONDUCT**

14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
18 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
19 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
20 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
21 was from time to time interrupted by work assignments while clocked out for what should have
22 been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and other AGGRIEVED
23 EMPLOYEES performed work for which they were not compensated for. Prior to clocking in
24 for a shift, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to put on,
25 including but not limited to, their work uniforms and protective gear, safety goggles, ear plugs,
26 gloves, safety sleeves, and other personal protective equipment. PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were not paid for their work time putting on their work gear
28 because they were not paid until they were on the production line at their scheduled start times.

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

6 12. In addition, State and federal law provides that employees must be paid overtime
7 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED
8 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
9 elements of an employee's performance.

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

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

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

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

1 not leave the work premises during their rest period.

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

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

23 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
24 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
25 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
26 provides that every employer shall furnish each of his or her employees with an accurate
27 itemized wage statement in writing showing, among other things, gross wages earned and all
28 applicable hourly rates in effect during the pay period and the corresponding amount of time

1 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
2 identify the correct rates of pay and number of hours worked, including for the “Total Non-Cash
3 Wag,” item of pay, which is a wage payment. Aside from the violations listed above in this
4 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
5 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
6 time to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
7 statements which violated Cal. Lab. Code § 226.

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

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

25 21. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018

1 AJDAR 12157 (Certified for Publication 12/19/18).

2
3 **JURISDICTION AND VENUE**

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

28 26. PLAINTIFF, and such persons that may be added from time to time who satisfy

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

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

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

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

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

3
4 **PRAYER FOR RELIEF**

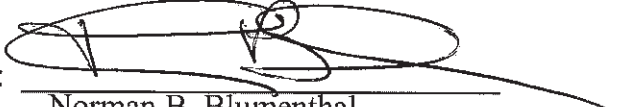
5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

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

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

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

13
14 Dated: October 9, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

15
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17 By: 

18 Norman B. Blumenthal
19 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

June 18, 2020

CA2070

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Metal Container Corporation
Certified Mail #70191120000066524721
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Metal Container Corporation in California and classified as non-exempt employees during the time period of June 18, 2019 until a date as determined by the Court. Our offices represent Plaintiff Oscar Noguera (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Metal Container Corporation (“Defendant”). Plaintiff was employed by Defendant in California as a Plant Technician from January of 2008 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs.,

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

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

8 **IN AND FOR THE COUNTY OF RIVERSIDE**

9
10 OSCAR NOGUERA, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 METAL CONTAINER CORPORATION,
16 a Corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF GOVT. CODE §12940.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT manufactures metal cans. The Company supplies lids, cans,
10 bottles, and other packaging materials. DEFENDANT serves breweries soft drink companies.

11 3. PLAINTIFF was employed by DEFENDANT in California from January of 2008
12 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
14 of minimum and overtime wages due for all time worked.

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

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

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

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they were

1 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
2 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
3 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
4 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and other
5 CALIFORNIA CLASS Members performed work for which they were not compensated for.
6 Prior to clocking in for a shift, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required to put on, including but not limited to, their work uniforms and protective gear, safety
8 goggles, ear plugs, gloves, safety sleeves, and other personal protective equipment.
9 PLAINTIFF and other CALIFORNIA CLASS Members were not paid for their work time
10 putting on their work gear because they were not paid until they were on the production line at
11 their scheduled start times. As a result, the PLAINTIFF and other CALIFORNIA CLASS
12 Members forfeited minimum wage and overtime compensation by working without their time
13 being accurately recorded and without compensation at the applicable minimum wage and
14 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
15 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
16 records.

17 9. In addition, State and federal law provides that employees must be paid overtime
18 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA
19 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific
20 elements of an employee's performance.

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

1 rate of pay” for purposes of calculating overtime pay. Management and supervisors described
2 the incentive program to potential and new employees as part of the compensation package. As
3 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
4 CLASS Members must be included in the “regular rate of pay.” The failure to do so has
5 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
6 CLASS Members by DEFENDANT.

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

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

1 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
2 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
3 applicable California Wage Order requires employers to provide employees with off-duty rest
4 periods, which the California Supreme Court defined as time during which an employee is
5 relieved from all work related duties and free from employer control. In so doing, the Court
6 held that the requirement under California law that employers authorize and permit all
7 employees to take rest period means that employers must relieve employees of all duties and
8 relinquish control over how employees spend their time which includes control over the
9 locations where employees may take their rest period. Employers cannot impose controls that
10 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
11 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
12 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
13 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
14 during their rest period.

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

26 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANT to use their own personal
28 cellular phones as a result of and in furtherance of their job duties as employees for

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

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

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

1 complied with the law. To the extent equitable tolling operates to toll claims by the
2 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
3 adjusted accordingly.

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

14 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
15 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
16 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
17 did not have a policy or practice which provided timely off-duty meal and rest breaks to
18 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
19 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
20 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
21 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
22 DEFENDANT’s business records. To date, DEFENDANT has yet to pay PLAINTIFF all of
23 his wages due to him and DEFENDANT has failed to pay any penalty wages owed to him under
24 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
25 does not exceed the sum or value of \$75,000. Prior to filing this action, PLAINTIFF exhausted
26 his administrative remedies by filing a timely administrative complaint with the Department of
27 Fair Employment and Housing (“DFEH”) and received a DFEH right-to-sue letter.

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1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
19 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that uniformly and systematically failed to record and pay PLAINTIFF and
22 the other members of the CALIFORNIA CLASS for all time worked,
23 including minimum wages owed and overtime wages owed for work
24 performed by these employees; and,
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods;
28 and,

- 1 (c) Committing an act of unfair competition in violation of the California
2 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
3 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members with necessary expenses incurred in
5 the discharge of their job duties.

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition of
10 their claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS will apply uniformly to every member of the CALIFORNIA
14 CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA CLASS, was classified as a non-
18 exempt employee paid on an hourly basis who was subjected to the
19 DEFENDANT's deceptive practice and policy which failed to provide the
20 legally required meal and rest periods to the CALIFORNIA CLASS and
21 thereby systematically underpaid compensation to PLAINTIFF and
22 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
23 result of DEFENDANT's employment practices. PLAINTIFF and the
24 members of the CALIFORNIA CLASS were and are similarly or
25 identically harmed by the same unlawful, deceptive, unfair and pervasive
26 pattern of misconduct engaged in by DEFENDANT; and,
- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are
2 no material conflicts between the claims of the representative PLAINTIFF
3 and the members of the CALIFORNIA CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA CLASS will
5 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

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

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

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

21 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
22 act on grounds generally applicable to the CALIFORNIA CLASS, making
23 appropriate class-wide relief with respect to the CALIFORNIA CLASS
24 as a whole in that DEFENDANT uniformly failed to pay all wages due to
25 members of the CALIFORNIA CLASS as required by law;

26 1) With respect to the First Cause of Action, the final relief on behalf
27 of the CALIFORNIA CLASS sought does not relate exclusively to
28 restitution because through this claim PLAINTIFF seeks

1 declaratory relief holding that the DEFENDANT's policy and
2 practices constitute unfair competition, along with declaratory
3 relief, injunctive relief, and incidental equitable relief as may be
4 necessary to prevent and remedy the conduct declared to constitute
5 unfair competition;

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

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

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

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

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be
27 dispositive of the interests of the other members not parties
28 to the adjudication or substantially impair or impede their

ability to protect their interests;

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

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

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

26
27 **THE CALIFORNIA LABOR SUB-CLASS**

28 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and

1 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
2 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
3 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
4 to the filing of the complaint and ending on the date as determined by the Court (the
5 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
6 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
7 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 compensation due to members of the CALIFORNIA LABOR SUB-
3 CLASS for missed meal and rest breaks in violation of the California
4 Labor Code and California regulations and the applicable California Wage
5 Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed conduct;
- 11 (d) The proper measure of damages and penalties owed to the members of the
12 CALIFORNIA LABOR SUB-CLASS; and,
- 13 (e) Whether DEFENDANT's conduct was willful.

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

- 16 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS all wages due for overtime worked, for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct minimum wage pay for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
26 itemized statement in writing showing the corresponding correct amount
27 of wages earned by the employee;
- 28 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
3 meal breaks and the legally required off-duty rest breaks;

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

7 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
8 when an employee is discharged or quits from employment, the employer
9 must pay the employee all wages due without abatement, by failing to
10 tender full payment and/or restitution of wages owed or in the manner
11 required by California law to the members of the CALIFORNIA LABOR
12 SUB-CLASS who have terminated their employment.

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

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

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

23 (c) The claims of the representative PLAINTIFF are typical of the claims of
24 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
25 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
26 was a non-exempt employee paid on an hourly basis who was subjected
27 to the DEFENDANT's practice and policy which failed to pay the correct
28 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.

1 PLAINTIFF sustained economic injury as a result of DEFENDANT's
2 employment practices. PLAINTIFF and the members of the
3 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
4 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
5 misconduct engaged in by DEFENDANT; and,

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

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

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

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

1 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
2 or refused to act on grounds generally applicable to the CALIFORNIA
3 LABOR SUB-CLASS, making appropriate class-wide relief with respect
4 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
5 DEFENDANT uniformly fails to pay all wages due. Including the correct
6 wages for all time worked by the members of the CALIFORNIA LABOR
7 SUB-CLASS as required by law;

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

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

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

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

28 B. Adjudications with respect to individual members of the

CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

39. 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

1 numerous that it is impractical to bring all members of the CALIFORNIA
2 LABOR SUB-CLASS before the Court;

3 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
4 Members, will not be able to obtain effective and economic legal redress
5 unless the action is maintained as a Class Action;

6 (e) There is a community of interest in obtaining appropriate legal and
7 equitable relief for the acts of unfair competition, statutory violations and
8 other improprieties, and in obtaining adequate compensation for the
9 damages and injuries which DEFENDANT's actions have inflicted upon
10 the CALIFORNIA LABOR SUB-CLASS;

11 (f) There is a community of interest in ensuring that the combined assets of
12 DEFENDANT are sufficient to adequately compensate the members of the
13 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

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

18 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
19 ascertainable from the business records of DEFENDANT. The
20 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
21 CLASS Members who worked for DEFENDANT in California at any
22 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

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28 **FIRST CAUSE OF ACTION**

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1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods, the required amount of compensation for missed meal and rest
6 periods, overtime, minimum, and reporting time wages owed, and failed to reimburse all
7 necessary business expenses incurred, due to a systematic business practice that cannot be
8 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
10 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
11 restitution of wages wrongfully withheld.

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

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

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

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

28 50. By and through the unlawful and unfair business practices described herein,

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

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

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

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

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

27
28 **SECOND CAUSE OF ACTION**

For Failure To Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197 and 1197.1]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)

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

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

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

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

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

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

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

1 minimum wage pay.

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

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

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

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

20 66. DEFENDANT knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
22 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
23 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
24 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
25 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
26 correct minimum wages for their time worked.

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

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

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

18
19 **THIRD CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

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

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

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

27 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 bring a claim for DEFENDANT's willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
2 these employees for all overtime worked, including, work performed in excess of eight (8) hours
3 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

14 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
16 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

25 76. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
28 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation

1 of the California Labor Code, the Industrial Welfare Commission requirements and other
2 applicable laws and regulations.

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

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

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

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

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

1 to proof at trial.

2 82. DEFENDANT knew or should have known that PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
4 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
5 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
6 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
7 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
8 overtime worked.

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

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

28 **FOURTH CAUSE OF ACTION**

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

2 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

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

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

1 workday that rest period was not provided.

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

6
7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

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

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

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

16 An employer shall indemnify his or her employee for all necessary expenditures
17 or losses incurred by the employee in direct consequence of the discharge of his
18 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.

19 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
20 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
23 Members as a business expense, were required by DEFENDANT to use their own personal
24 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
25 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
26 cost associated with the use of their personal cellular phones and personal vehicles for
27 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
28

1 were required by DEFENDANT to use their personal cell phones and personal vehicles for
2 work related issues. As a result, in the course of their employment with DEFENDANT,
3 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
4 expenses which included, but were not limited to, costs related to the use of their personal
5 cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANT.
6 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
7 download and use a phone application named “Insperity” in order to log their hours worked.
8 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
9 phones in order to download the phone application. Further, PLAINTIFF and other
10 CALIFORNIA CLASS Members were required by DEFENDANT to use their own personal
11 vehicles in order to perform job tasks for DEFENDANT. As a result, in the course of their
12 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
13 CLASS also incurred unreimbursed business expenses related to the use of their personal
14 vehicles, on behalf of and for the benefit of DEFENDANT. These expenses were necessary to
15 complete their principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to
16 assert any waiver of this expectation. Although these expenses were necessary expenses
17 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
18 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
19 SUB-CLASS members for these expenses as an employer is required to do under the laws and
20 regulations of California.

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

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28 **SEVENTH CAUSE OF ACTION**

For Failure to Provide Accurate Itemized Statements
[Cal. Lab. Code § 226]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

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

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

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of 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.

99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 other members of the CALIFORNIA CLASS with complete and accurate wage statements
2 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
3 Code § 226 provides that every employer shall furnish each of his or her employees with an
4 accurate itemized wage statement in writing showing, among other things, gross wages earned
5 and all applicable hourly rates in effect during the pay period and the corresponding amount of
6 time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing
7 to identify the correct rates of pay and number of hours worked, including for the “Retro OT”
8 item of pay, which is an overtime wage payment. Aside from the violations listed above in this
9 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
10 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
11 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
12 wage statements which violated Cal. Lab. Code § 226.

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

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28 **EIGHTH CAUSE OF ACTION**

For Failure to Pay Wages When Due
[Cal. Lab. Code §§ 201, 202, 203]
(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)

101. 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.

102. 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.

103. 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."

104. 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.

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

106. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action

1 therefor is commenced; but the wages shall not continue for more than 30 days.

2 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
3 Members has terminated and DEFENDANT has not tendered payment of wages, to these
4 employees, as required by law.

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

11 12 **NINTH CAUSE OF ACTION**

13 **For Wrongful Termination in Violation of Public Policy**

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

15 109. PLAINTIFF realleges and incorporate by this reference, as though fully set
16 forth herein, the prior paragraphs of this Complaint.

17 110. PLAINTIFF's wrongful termination in January of 2020 was for a pretextual
18 reason(s) to disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

19 111. Within the State of California there exists a substantial and fundamental public
20 policy, set forth in the California GovernmentCode §12900 et seq., which forbids racial and/or
21 national origin harassment/racial discrimination, retaliation, and wrongful termination.
22 Unlawful harassment includes the right to be free from unwanted, offensive racial harassment,
23 and the right to protest such conduct without fear of retaliation or further harm. This public
24 policy of the state is one that benefits the public at large and guarantees the rights of an
25 employee to perform their work free from racial harassment/discrimination/retaliation.

26 112. The motivating reason(s) for PLAINTIFF's termination were national origi and/or
27 racial harassment/ discrimination and PLAINTIFF's protests and/or resistance thereof.

1 PLAINTIFF's discharge from his position of employment was in violation of the public policies
2 of the State of California.

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

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

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11 **TENTH CAUSE OF ACTION**
12 **For Violation of Government Code §12940(a) - Racial Discrimination**
13 **(By PLAINTIFF Against All Defendants)**

14 115. PLAINTIFF realleges and incorporate by this reference, as though fully set
15 forth herein, the prior paragraphs of this Complaint.

16 116. PLAINTIFF was employed by DEFENDANT.

17 117. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

18 118. PLAINTIFF was terminated from his employment and/or suffered other
19 adverse employment actions.

20 119. PLAINTIFF's National Origin as a Mexican was a substantial motivating
21 reason(s) for his termination and other adverse employment actions, including termination of
22 his employment.

23 120. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
24 losses in earnings and employment benefits and emotional distress in an amount to be
25 determined according to proof at trial.

26 121. In doing the acts herein alleged, DEFENDANT acted with malice and
27 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
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1 entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish
2 DEFENDANT and to deter such wrongful conduct in the future.
3

4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
2 PERIOD plus interest thereon at the statutory rate;

- 3 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
4 period in which a violation occurs and one hundred dollars (\$100) per
5 each member of the CALIFORNIA LABOR SUB-CLASS for each
6 violation in a subsequent pay period, not exceeding an aggregate penalty
7 of four thousand dollars (\$4,000), and an award of costs for violation of
8 Cal. Lab. Code § 226;
9 D) The wages of all terminated employees from the CALIFORNIA LABOR
10 SUB-CLASS as a penalty from the due date thereof at the same rate until
11 paid or until an action therefore is commenced, in accordance with Cal.
12 Lab. Code § 203;
13 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
14 512 and the applicable IWC Wage Order;
15 F) The amount of the expenses PLAINTIFF and each member of the
16 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
17 duties, plus interest, and costs of suit; and,
18 G) For liquidated damages pursuant to California Labor Code Sections
19 1194.2 and 1197.

20 3. On behalf of the Ninth and Tenth Causes of Action:

- 21 A) For all special damages which were sustained as a result of
22 DEFENDANT's conduct, including, but not limited to, back pay, front
23 pay, lost compensation and job benefits that PLAINTIFF would have
24 received but for the retaliatory practices of DEFENDANT; and,
25 B) For all exemplary damages, according to proof, which were sustained as
26 a result of DEFENDANT's conduct.

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

6 Dated: June 18, 2020 BLUMENTHAL NORDREHAUG BHOWMIK
7 DE BLOUW LLP
8

9 By: _____

10 Norman B. Blumenthal

11 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: June 18, 2020

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff