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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

OSCAR NOGUERA, VALERIE
CAMPOS FLORES, DANIEL
MARTINEZ, VERA HOWARD and
EDMUNDO FLORES, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

PLAINTIFFS,

vs.

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

Defendants.

OSCAR NOGUERA, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

METAL CONTAINER CORPORATION.,
a California Corporation; and Does 1
through 50, Inclusive,

Defendants.

Case No. **RIC2003235** (M.F.)
consolidated with RIC2004156

**FIRST AMENDED 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;
10. VIOLATION OF GOVT. CODE §12940;
11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 PLAINTIFFS Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera Howard and
2 Edmundo Flores (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated
3 current and former employees alleges on information and belief, except for their own acts and knowledge
4 which are based on personal knowledge, the following:

5
6 **THE PARTIES**

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

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

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

16 4. Plaintiff Flores has been employed by DEFENDANT in California Since 1989 and has
17 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
18 entitled to the legally required meal and rest periods and payment of minimum and overtime wages due
19 for all time worked.

20 5. Plaintiff Martinez has been employed by DEFENDANT in California since 1990 and has
21 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
22 entitled to the legally required meal and rest periods and payment of minimum and overtime wages due
23 for all time worked.

24 6. Plaintiff Howard has been employed by DEFENDANT in California since 1990 and has
25 been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
26 entitled to the legally required meal and rest periods and payment of minimum and overtime wages due
27 for all time worked.

28 7. Plaintiff Edmundo Flores has been employed by DEFENDANT in California since 1990

1 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
2 and entitled to the legally required meal and rest periods and payment of minimum and overtime wages
3 due for all time worked.

4 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
5 defined as all individuals who are or previously were employed by DEFENDANT in California and
6 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period of
7 August 17, 2016 through September 1, 2021 (the "CALIFORNIA CLASS PERIOD"). The amount in
8 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
9 (\$5,000,000.00).

10 9. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
11 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
12 CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully
13 compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful,
14 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages
15 due PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in
17 the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who
18 have been economically injured by DEFENDANT's past and current unlawful conduct, and all other
19 appropriate legal and equitable relief.

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

28 11. The agents, servants and/or employees of the Defendants and each of them acting on

1 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant
2 and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf
3 of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant
4 are legally attributable to the other Defendants and all Defendants are jointly and severally liable to
5 PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate
6 result of the conduct of the Defendants' agents, servants and/or employees.

7 8 THE CONDUCT

9 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
10 to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time
11 during which an employee is subject to the control of an employer, including all the time the employee
12 is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS
13 Members to work without paying them for all the time they were under DEFENDANT's control.
14 Specifically, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed
15 to be PLAINTIFFS' off-duty meal break. PLAINTIFFS was from time to time interrupted by work
16 assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break.
17 Additionally, PLAINTIFFS and other CALIFORNIA CLASS Members performed work for which they
18 were not compensated for. Prior to clocking in for a shift, PLAINTIFFS and other CALIFORNIA CLASS
19 Members were required to put on, including but not limited to, their work uniforms and protective gear,
20 safety goggles, ear plugs, gloves, safety sleeves, and other personal protective equipment. PLAINTIFFS
21 and other CALIFORNIA CLASS Members were not paid for their work time putting on their work gear
22 because they were not paid until they were on the production line at their scheduled start times. As a
23 result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and
24 overtime compensation by working without their time being accurately recorded and without
25 compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice
26 not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced
27 by DEFENDANT's business records.

28 13. In addition, State and federal law provides that employees must be paid overtime at one-

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

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

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

28 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA

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

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

1 the employee, at the time of obeying the directions, believed them to be unlawful."

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

12 19. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
14 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
15 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
16 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
17 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and
18 CALIFORNIA CLASS Members were paid on an hourly basis. As such, the wage statements should
19 reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable
20 pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage
21 statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members failed
22 to identify such information. More specifically, the wage statements failed to identify the accurate total
23 hours worked each pay period. When the hours shown on the wage statements were added up, they did
24 not equal the actual total hours worked during the pay period. Specifically, DEFENDANT violated
25 Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the
26 "Total Non-Cash Wag," item of pay, which is a wage payment. Aside from the violations listed above
27 in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists
28 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to

1 time provided PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
2 which violated Cal. Lab. Code § 226.

3 20. In violation of the applicable sections of the California Labor Code and the requirements
4 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT intentionally and knowingly
5 failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal
6 and rest periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
7 payment for all time worked as required by California law which allows DEFENDANT to illegally profit
8 and gain an unfair advantage over competitors who complied with the law. To the extent equitable
9 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA
10 CLASS PERIOD should be adjusted accordingly.

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

20 22. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally required
21 off-duty meal and rest breaks to them as required by the applicable Wage Order and Labor Code and
22 failed to pay them all minimum and overtime wages due to them. DEFENDANT did not have a policy
23 or practice which provided timely off-duty meal and rest breaks to PLAINTIFFS and also failed to
24 compensate PLAINTIFFS for their missed meal and rest breaks. The nature of the work performed by
25 the PLAINTIFFS did not prevent them from being relieved of all of their duties for the legally required
26 off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFFS with the legally
27 required meal periods is evidenced by DEFENDANT's business records. To date, DEFENDANT has
28 yet to pay Plaintiff Noguera all of his wages due to him and DEFENDANT has failed to pay any penalty

1 wages owed to him under California Labor Code Section 203. The amount in controversy for
2 PLAINTIFFS individually does not exceed the sum or value of \$75,000. Prior to filing this action,
3 Plaintiff Noguera exhausted his administrative remedies by filing a timely administrative complaint with
4 the Department of Fair Employment and Housing (“DFEH”) and received a DFEH right-to-sue letter on
5 August 3, 2020.

6 7 **JURISDICTION AND VENUE**

8 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
10 brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANT
11 pursuant to Cal. Code of Civ. Proc. § 382.

12 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395
13 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, reside in this County, and
14 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this
15 County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct
16 herein alleged in this County against members of the CALIFORNIA CLASS.

17 **THE CALIFORNIA CLASS**

18 25. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”) as a Class Action,
20 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
21 are or previously were employed by DEFENDANT in California and classified as non-exempt employees
22 (the “CALIFORNIA CLASS”) at any time during the period of August 17, 2016 through September 1,
23 2021 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
24 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

1 (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally,
2 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest
3 breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT
4 enjoyed the benefit of this work, required employees to perform this work and permits or suffers to
5 permit this work.

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

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

16 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

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

1 CLASS members with necessary expenses incurred in the discharge of their job
2 duties.

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

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

28 32. In addition to meeting the statutory prerequisites to a Class Action, this action is properly

1 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

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

5 1) Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA CLASS which would establish incompatible
7 standards of conduct for the parties opposing the CALIFORNIA CLASS;
8 and/or,

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

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

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

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

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

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

1 of Civ. Proc. § 382.

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

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

business records of DEFENDANT; and,

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

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

THE CALIFORNIA LABOR SUB-CLASS

35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period of August 17, 2016 through September 1, 2021 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

36. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS

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

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

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

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

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
14 missed meal and rest breaks in violation of the California Labor Code and
15 California regulations and the applicable California Wage Order;
- 16 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
17 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
18 wage statements;
- 19 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
20 conduct;
- 21 (d) The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and,
- 23 (e) Whether DEFENDANT's conduct was willful.

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

- 26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
27 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
28 wages due for overtime worked, for which DEFENDANT is liable pursuant to

1 Cal. Lab. Code § 1194;

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

6 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
8 statement in writing showing the corresponding correct amount of wages earned
9 by the employee;

10 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
11 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
12 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
13 legally required off-duty rest breaks;

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

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

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

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

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
3 and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 4 (c) The claims of the representative PLAINTIFFS are typical of the claims of each
5 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
6 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
7 employee paid on an hourly basis who was subjected to the DEFENDANT's
8 practice and policy which failed to pay the correct amount of wages due to the
9 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
10 as a result of DEFENDANT's employment practices. PLAINTIFFS and the
11 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
12 identically harmed by the same unlawful, deceptive and unfair misconduct
13 engaged in by DEFENDANT; and,
- 14 (d) The representative PLAINTIFFS will fairly and adequately represent and protect
15 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
16 who are competent and experienced in Class Action litigation. There are no
17 material conflicts between the claims of the representative PLAINTIFFS and the
18 members of the CALIFORNIA LABOR SUB-CLASS that would make class
19 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
20 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
21 Members.

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

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

- 28 1) Inconsistent or varying adjudications with respect to individual members

1 of the CALIFORNIA LABOR SUB-CLASS which would establish
2 incompatible standards of conduct for the parties opposing the
3 CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

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

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

1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,

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

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

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

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

23 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
24 CLASS predominate over any question affecting only individual CALIFORNIA
25 LABOR SUB-CLASS Members;

26 (b) A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
28 CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on their
3 employment;

4 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
6 before the Court;

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

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

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

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

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

26 (i) Class treatment provides manageable judicial treatment calculated to bring a
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
28 arising out of the conduct of DEFENDANT as to the members of the

CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

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

48. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially

1 injurious to employees, and were without valid justification or utility for which this Court should issue
2 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,
3 including restitution of wages wrongfully withheld.

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

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

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

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

23 53. PLAINTIFFS further demand on behalf of themselves and each member of the
24 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid
25 rest period was not timely provided as required by law.

26 54. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived

1 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
3 competitors who comply with the law.

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

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

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

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

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

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

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

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

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

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

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

9 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
10 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
11 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
12 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
14 earned wages.

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

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

26 71. In performing the acts and practices herein alleged in violation of California labor laws,
27 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked
28 and provide them with the requisite compensation, DEFENDANT acted and continues to act

1 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
2 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal rights,
4 and otherwise causing them injury in order to increase company profits at the expense of these
5 employees.

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

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

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

21 73. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
22 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this
23 Complaint.

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

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

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

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

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

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

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

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

28 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt

1 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFFS
2 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and the
3 other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective
4 bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather,
5 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS
6 based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of
7 California.

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

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

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

22 86. DEFENDANT knew or should have known that PLAINTIFFS and the other members of
23 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
24 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
25 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
26 perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA
27 LABOR SUB-CLASS for overtime worked.

28 87. In performing the acts and practices herein alleged in violation of California labor laws,

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

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

18 19 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to
27 provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA
28 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature

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

13 91. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
14 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members
15 who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour
16 of compensation at each employee's regular rate of pay for each workday that a meal period was not
17 provided.

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

21 **FIFTH CAUSE OF ACTION**

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

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

24 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

25 93. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

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

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

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

19
20 **SIXTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 2802]**

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

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

26
27 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

28 An employer shall indemnify his or her employee for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or
2 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.

3 99. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
4 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
5 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. In the course
6 of their employment PLAINTIFFS and other CALIFORNIA CLASS Members as a business expense,
7 were required by DEFENDANT to use their own personal cellular phones and personal vehicles as a
8 result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed
9 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
10 and personal vehicles for DEFENDANT's benefit. Specifically, PLAINTIFFS and other CALIFORNIA
11 CLASS Members were required by DEFENDANT to use their personal cell phones and personal vehicles
12 for work related issues. As a result, in the course of their employment with DEFENDANT,
13 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
14 expenses which included, but were not limited to, costs related to the use of their personal cellular phones
15 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS
16 and other CALIFORNIA CLASS Members were required to download and use a phone application
17 named "Insperity" in order to log their hours worked. PLAINTIFFS and other CALIFORNIA CLASS
18 Members were required to use their personal cell phones in order to download the phone application.
19 Further, PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to
20 use their own personal vehicles in order to perform job tasks for DEFENDANT. As a result, in the
21 course of their employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
22 CLASS also incurred unreimbursed business expenses related to the use of their personal vehicles, on
23 behalf of and for the benefit of DEFENDANT. These expenses were necessary to complete their
24 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
25 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the
26 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
27 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer
28

1 is required to do under the laws and regulations of California.

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

6
7 **SEVENTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 226]**

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

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

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

16 (1) gross wages earned,

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

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

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

24 (5) net wages earned,

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

26 (7) the name of the employee and his or her social security number, except that by January 1,
27 2008, only the last four digits of his or her social security number or an employee identification
28 number other than a social security number may be shown on the itemized statement,

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

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

4 103. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
6 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
7 provides that every employer shall furnish each of his or her employees with an accurate itemized wage
8 statement in writing showing, among other things, gross wages earned and all applicable hourly rates in
9 effect during the pay period and the corresponding amount of time worked at each hourly rate.
10 PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such,
11 the wage statements should reflect all applicable hourly rates during the pay period and the total hours
12 worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code
13 Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA
14 LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage
15 statements failed to identify the accurate total hours worked each pay period. When the hours shown on
16 the wage statements were added up, they did not equal the actual total hours worked during the pay
17 period. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
18 and number of hours worked, including for the “Total Non-Cash Wag,” item of pay, which is a wage
19 payment. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to
20 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226
21 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members of
22 the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

23 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
24 causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
25 CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for
26 all missed meal and rest breaks and the amount of employment taxes which were not properly paid to
27 state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and
28 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages

1 of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
2 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
3 according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
4 PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

5
6 **EIGHTH CAUSE OF ACTION**

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

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

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

10 **and Against All Defendants)**

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

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

15 As used in this article:

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

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

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

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

23 If an employee not having a written contract for a definite period quits his or her
24 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
25 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
26 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
27 for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

28 109. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS

1 Members' employment contract.

2 110. Cal. Lab. Code § 203 provides:

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

6 111. The employment of Plaintiff Noguera and many CALIFORNIA LABOR SUB-CLASS
7 Members has terminated and DEFENDANT has not tendered payment of wages, to these employees, as
8 required by law.

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

14
15 **NINTH CAUSE OF ACTION**

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

17 **(By Plaintiff Noguera Against All Defendants)**

18 113. Plaintiff Noguera realleges and incorporate by this reference, as though fully set forth
19 herein, the prior paragraphs of this Complaint.

20 114. Plaintiff Noguera's wrongful termination in January of 2020 was for a pretextual reason(s)
21 to disguise DEFENDANT's unlawful employment practices directed at Plaintiff Noguera.

22 115. Within the State of California there exists a substantial and fundamental public policy, set
23 forth in the California Government Code §12900 et seq., which forbids racial and/or national origin
24 harassment/racial discrimination, retaliation, and wrongful termination. Unlawful harassment includes
25 the right to be free from unwanted, offensive racial harassment, and the right to protest such conduct
26 without fear of retaliation or further harm. This public policy of the state is one that benefits the public
27
28

1 at large and guarantees the rights of an employee to perform their work free from racial
2 harassment/discrimination/retaliation.

3 116. The motivating reason(s) for Plaintiff Noguera's termination were national origin and/or
4 racial harassment/discrimination and Plaintiff Noguera's protests and/or resistance thereof. Plaintiff
5 Noguera's discharge from his position of employment was in violation of the public policies of the State
6 of California.

7 117. As a result of DEFENDANT's actions, Plaintiff Noguera has suffered substantial losses
8 in earnings and employment benefits and emotional distress in an amount to be determined according
9 to proof at trial.

10 118. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and
11 with a conscious disregard of Plaintiff Noguera's rights, and Plaintiff Noguera is entitled to exemplary
12 and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT and
13 to deter such wrongful conduct in the future.

14
15
16 **TENTH CAUSE OF ACTION**
17 **For Violation of Government Code §12940(a) - Racial Discrimination**
18 **(By Plaintiff Noguera Against All Defendants)**

19 119. Plaintiff Noguera realleges and incorporate by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 120. Plaintiff Noguera was employed by DEFENDANT.

22 121. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

23 122. Plaintiff Noguera was terminated from his employment and/or suffered other adverse
24 employment actions.

25 123. Plaintiff Noguera's National Origin as a Mexican was a substantial motivating
26 reason(s) for his termination and other adverse employment actions, including termination of his
27 employment.

124. As a result of DEFENDANT's conduct, Plaintiff Noguera has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

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

ELEVENTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFFS and Against All Defendants)

126. PLAINTIFFS incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

128. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt

employees (“AGGRIEVED EMPLOYEES”) during the time period of June 18, 2019 through September 1, 2021 (the “PAGA PERIOD”).

129. On June 18, 2020, Plaintiff Oscar Noguera gave written notice by electronic mail to the Labor and Workforce Development Agency (the “Agency”) and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. A copy of this correspondence is attached hereto as Exhibit A. On October 16, 2020, PLAINTIFFS gave written notice by electronic mail to the Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. A copy of this correspondence is attached hereto as Exhibit B. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

130. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay overtime and minimum wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections listed in 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 Applicable Industrial Welfare Commission Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

¹ Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code section 558(a)(3).

131. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018)..

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

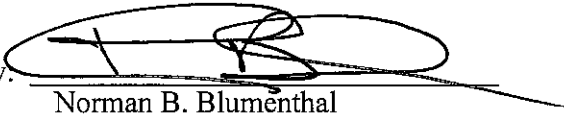
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- 1 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
2 a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
3 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an
4 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
5 of Cal. Lab. Code § 226;
- 6 D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS
7 as a penalty from the due date thereof at the same rate until paid or until an action
8 therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 9 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
10 applicable IWC Wage Order;
- 11 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
12 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of
13 suit; and,
- 14 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.
- 15 3. On behalf of the Ninth and Tenth Causes of Action:
- 16 A) For all special damages which were sustained as a result of DEFENDANT's conduct,
17 including, but not limited to, back pay, front pay, lost compensation and job benefits that
18 PLAINTIFFS would have received but for the retaliatory practices of DEFENDANT; and,
- 19 B) For all exemplary damages, according to proof, which were sustained as a result of
20 DEFENDANT's conduct.
- 21 4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 22 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
23 Act of 2004.
- 24 5. On all claims:
- 25 A) An award of interest, including prejudgment interest at the legal rate;
- 26 B) Such other and further relief as the Court deems just and equitable; and,
- 27
- 28

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

4 Dated: February 14, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

5
6 By: 

7 Norman B. Blumenthal
8 Attorneys for PLAINTIFFS
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1 DEMAND FOR A JURY TRIAL

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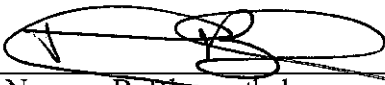
3 PLAINTIFFS demand a jury trial on issues triable to a jury.

4

5 Dated: February 14, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

6

7 By: 

8 Norman B. Blumenthal
9 Attorneys for PLAINTIFFS

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EXHIBIT A

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

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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.

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EXHIBIT B

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

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Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

October 16, 2020
CA2070

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency	Metal Container Corporation
Online Filing	Certified Mail #70192970000014864514
	CT Corporation System
	818 West Seventh Street, Suite 930
	Los Angeles, CA 90017

Amended Notice For LWDA, Case No. LWDA-CM-793846-20

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 1 1070(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:

Our offices represent Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Metal Container Corporation (“Defendant”).

Our offices originally sent a PAGA Notice on June 18, 2020 (“Noguera’s PAGA Notice”) which gave notice to the LWDA and Defendant to enable Mr. Noguera to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* Noguera’s PAGA Notice did not include Plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores. This Amended Notice is intended to amend Noguera’s PAGA Notice and add Plaintiffs Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores, and also clarify the violations under California Labor Code Section 226(a).

“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 Plaintiffs Oscar Noguera, Valerie Campos Flores, Daniel Martinez, Vera Howard and Edmundo Flores (“Plaintiffs”), and other Aggrieved Employees

in a lawsuit against Defendant Metal Container Corporation (“Defendant”). Plaintiffs have all been employed by Defendant in California as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control during the Private Attorney General Act statutory period. Defendant, however, unlawfully fails to record and pay Plaintiffs 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 requires Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant require Plaintiffs 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 fails to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant fails to advise Plaintiffs 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 fails to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant fails to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Plaintiffs and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiffs and other Aggrieved Employees failed to identify such information. More specifically, the wage statements fail to identify the accurate total hours worked each pay period. When the hours shown on the wage statements are added up, they do not equal the actual total hours worked during the pay period. Also, Defendant violated Cal. Lab. Code 226 by failing to identify the correct rates of pay and number of hours worked, including for the “Total non-cash Wag” items of pay.

Additionally, Plaintiffs contend that Defendant fails to comply with Industrial Wage Order 7(A)(3) in that Defendant fails to keep time records showing when Plaintiffs begin and end each shift and meal period. Plaintiffs 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 Plaintiffs 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 1 1070(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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* 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 Plaintiffs 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**
2 **BHOWMIK DE BLOUW LLP**
3 2255 Calle Clara, La Jolla, CA 92037
T: (858)551-1223; F: (858) 551-1232

Noguera v. Metal Container Corp.
Riverside County Superior Court
Case No. RIC2003235
(Class Action)

4 **PROOF OF SERVICE**

5 I, Karla Horne, am employed in the County of San Diego, State of California. I am
6 over the age of 18 and not a party to the within action. My business address is 2255 Calle
Clara, La Jolla, California, 92037.

7 On February 14, 2022, I served the document(s) described as:

8 **Plaintiff's First Amended Class Action Complaint**

9
10 — (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be
11 placed in the United States mail at San Diego, California. I am readily familiar with
12 this firm's business practice for collection and processing of correspondence for
mailing with the U.S. Postal Service pursuant to which practice the correspondence
will be deposited with the U.S. Postal Service this same day in the ordinary course of
business (C.C.P. Section 10139a); 2015.5):

13 X (ELECTRONIC/E-MAIL): Pursuant to CCP §1010.6 by e-mailing the document(s) to the
14 persons at the confirmed e-mail address(es) below.

15 Spencer.skeen@ogletree.com
Marlene.moffitt@ogletree.com

Cc: lisa.bernard@ogletreedekins.com

16 OGLETREE, DEAKINS, NSH, SMOAK & STEWART
17 Spencer C. Skeen, Esq.
18 Marlene M. Moffitt, Esq.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92112

19
20 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on February 14, 2022, at San Diego, California.

21
22 

23 Karla Horne