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6 Attorneys for Plaintiff

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

8 **IN AND FOR THE COUNTY OF SAN MATEO**

9
10 JACQUELINE MONASTERIO, on behalf
11 of the State of California, as a private
attorney general,

12
13 Plaintiff,

14 vs.

15 CITIBANK, N.A., a Corporation, and
16 DOES 1 through 50, inclusive,

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18 Defendants.
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Electronically
FILED

by Superior Court of California, County of San Mateo

ON 8/27/2020

By /s/ Anthony Berini
Deputy Clerk

Case No. 20-CIV-03650

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

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

6 7 **INTRODUCTION**

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

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

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

23 24 **THE PARTIES**

25 4. Defendant Citibank, N.A. (“DEFENDANT”) is a corporation that at all relevant
26 times mentioned herein conducted and continues to conduct substantial business in the state of
27 California.

28 5. DEFENDANT is the consumer division of financial services multinational

1 Citigroup. DEFENDANT was founded in 1812.

2 6. PLAINTIFF has been employed by DEFENDANT since November of 2018 and
3 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
4 basis, and entitled to the legally required meal and rest periods and payment of minimum and
5 overtime wages due for all time worked.

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

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and meal break wages, by working without their time being correctly recorded and without compensation at the applicable rates.

12. State and federal law provide that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES' compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
3 hourly basis with incentive compensation when the employees met the various performance
4 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
5 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
6 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
7 of calculating overtime pay. Management and supervisors described the incentive program to
8 potential and new employees as part of the compensation package. As a matter of law, the
9 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
10 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
11 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
12 DEFENDANT.

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

23 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
24 are also required from time to time to work in excess of four (4) hours without being provided
25 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
26 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
27 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
28 between six (6) and eight (8) hours from time to time, and a first, second and third rest period

1 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
2 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
3 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES are from time to time denied their proper rest periods by
5 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
6 Order requires employers to provide employees with off-duty rest periods, which the California
7 Supreme Court defined as time during which an employee is relieved from all work related
8 duties and free from employer control. In so doing, the Court held that the requirement under
9 California law that employers authorize and permit all employees to take rest period means that
10 employers must relieve employees of all duties and relinquish control over how employees
11 spend their time which includes control over the locations where employees may take their rest
12 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
13 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
14 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to
15 remain on DEFENDANT's premises under DEFENDANT's control during what should be their
16 paid, off duty rest periods.

17 16. DEFENDANT also fails to provide PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES with complete and accurate wage statements which failed to show, among other
19 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
20 employer shall furnish each of his or her employees with an accurate itemized wage statement
21 in writing showing, among other things, gross wages earned and all applicable hourly rates in
22 effect during the pay period and the corresponding amount of time worked at each hourly rate.
23 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
24 and number of hours worked, including for the "INCENTOVT" item of pay, which is a wage
25 payment. Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFF
26 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
27 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

11 18. In the course of their employment PLAINTIFF and other AGGRIEVED
12 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
13 cellular phones as a result of and in furtherance of their job duties as employees for
14 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
15 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
16 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
17 personal cellular phones to respond to managers while off the clock (which also results in
18 minimum wage and overtime violations) and DEFENDANT also requires PLAINTIFF and
19 other AGGRIEVED EMPLOYEES to use their personal home offices without reimbursing them
20 for the costs associated with such use. As a result, in the course of their employment with
21 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
22 business expenses which included, but were not limited to, costs related to the use of their
23 personal cellular phones and home offices all on behalf of and for the benefit of DEFENDANT.

24 19. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
26 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
28 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully

1 avoid the payment for all time worked as required by California law which allows
2 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
3 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
4 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

5 20. By reason of this uniform conduct applicable to PLAINTIFF and all
6 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
7 which fails to accurately calculate and record all missed meal and rest periods and failed to pay
8 all minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES.
9 The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
10 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
11 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
12 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
13 regulations promulgated thereunder as herein alleged.

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

19 **JURISDICTION AND VENUE**

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

22 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
24 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
25 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
26 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
27 AGGRIEVED EMPLOYEES.
28

1 **FIRST CAUSE OF ACTION**

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

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

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

5 24. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-23,
6 supra, as though fully set forth at this point.

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

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

23 27. On June 4, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
24 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
25 the specific provisions of this code alleged to have been violated as required by Labor Code §
26 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
27 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
28 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil

1 action under PAGA pursuant to Section 2699 as the proxy of the State of California with
2 respect to all AGGRIEVED EMPLOYEES as herein defined.

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

15
16 **PRAYER FOR RELIEF**

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

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

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

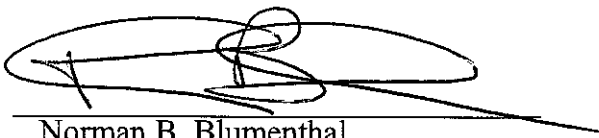
23 B) An award of attorneys' fees and cost of suit, as allowable under the
24 law, including, but not limited to, pursuant to Labor Code §2699.

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

1 Dated: August 27, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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4 By: 
5 Norman B. Blumenthal
6 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:
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WRITERS EXT:
1004

June 4, 2020
CA2084

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Citibank, N.A.
Certified Mail #70192280000189179097
701 East 60th Street North
Sioux Falls, South Dakota 57104

Citibank, N.A.
Certified Mail #70192280000189179080
Kristen Driscoll
388 Greenwich Street, 14th Floor
New York, New York 10013

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 Citibank, N.A. in California and classified as non-exempt employees during the time period of June 4, 2019 until a date as determined by the Court. Our offices represent Plaintiff Jacqueline Monasterio (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Citibank, N.A. (“Defendant”). Plaintiff has been employed by Defendant in California as a Bank Teller since November of 2018 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 her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

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

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9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN MATEO**

14 JACQUELINE MONASTERIO, an
15 individual, on behalf of herself and on
16 behalf of all persons similarly situated,

17 Plaintiff,

18 vs.

19 CITIBANK, N.A., a Corporation, and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT is the consumer division of financial services multinational
10 Citigroup. DEFENDANT was founded in 1812.

11 3. PLAINTIFF has been employed by DEFENDANT since November of 2018 and
12 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
13 basis, and entitled to the legally required meal and rest periods and payment of minimum and
14 overtime wages due for all time worked.

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

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

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

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

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

22 23 **THE CONDUCT**

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

1 under DEFENDANT's control. Specifically, DEFENDANT requires PLAINTIFF to work
2 while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
3 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
4 should be PLAINTIFF's off-duty meal break. As a result, PLAINTIFF and other
5 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and
6 meal break wages, by working without their time being correctly recorded and without
7 compensation at the applicable rates.

8 9. State and federal law provide that employees must be paid overtime at one-and-
9 one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS
10 Members were compensated at an hourly rate plus incentive pay that was tied to specific
11 elements of an employee's performance.

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

26 11. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members are also from time to time unable to take off duty meal breaks
28 and are not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA

1 CLASS Members are from time to time required to perform work as ordered by DEFENDANT
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period from time to time in which these employees are required by
5 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other
6 CALIFORNIA CLASS Members therefore forfeit meal breaks without additional compensation
7 and in accordance with DEFENDANT's corporate policy and practice.

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

1 under DEFENDANT's control during what should be their paid, off duty rest periods.

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

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

25 15. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
26 Members as a business expense, are required by DEFENDANT to use their own personal
27 cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated

1 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
2 PLAINTIFF and other CALIFORNIA CLASS Members are required by DEFENDANT to use
3 their personal cellular phones to respond to managers while off the clock (which also results in
4 minimum wage and overtime violations) and DEFENDANT also requires PLAINTIFF and
5 other CALIFORNIA CLASS Members to use their personal home offices without reimbursing
6 them for the costs associated with such use. As a result, in the course of their employment with
7 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
8 unreimbursed business expenses which included, but were not limited to, costs related to the use
9 of their personal cellular phones and home offices all on behalf of and for the benefit of
10 DEFENDANT.

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

21 17. By reason of this uniform conduct applicable to PLAINTIFF and all
22 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
24 (the "UCL"), by engaging in a company-wide policy and procedure which fails to accurately
25 calculate and record all missed meal and rest periods and failed to pay all minimum and
26 overtime wages due to PLAINTIFF and other CALIFORNIA CLASS Members. The proper
27 recording of these employees' missed meal and rest breaks is the DEFENDANT's burden. As
28 a result of DEFENDANT's intentional disregard of the obligation to meet this burden,

1 DEFENDANT fails to properly calculate and/or pay all required compensation for work
2 performed by the members of the CALIFORNIA CLASS and violated the California Labor
3 Code and regulations promulgated thereunder as herein alleged.

4 18. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally
5 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
6 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANT
7 does not have a policy or practice which provides timely off-duty meal and rest breaks to
8 PLAINTIFF and also fails to compensate PLAINTIFF for her missed meal and rest breaks. The
9 nature of the work performed by the PLAINTIFF does not prevent her from being relieved of
10 all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
11 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
12 DEFENDANT's business records. DEFENDANT also requires PLAINTIFF to work off the
13 clock without paying her for all the time she is working for DEFENDANT and performing post-
14 shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks
15 that DEFENDANT expects PLAINTIFF to complete on a daily and/or weekly basis. As a result
16 of DEFENDANT not accurately recording all missed meal and rest periods and/or minimum
17 and overtime wages due, the wage statements issued to PLAINTIFF by DEFENDANT violated
18 California law, and in particular, Labor Code Section 226(a). The amount in controversy for
19 PLAINTIFF individually does not exceed the sum or value of \$75,000.

20 21 **JURISDICTION AND VENUE**

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

26 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained

1 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against members of the
3 CALIFORNIA CLASS.

4 5 **THE CALIFORNIA CLASS**

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

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

18 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
20 requirements, and the applicable provisions of California law, intentionally, knowingly, and
21 wilfully, engages in a practice whereby DEFENDANT systematically fails to record all meal
22 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
23 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
24 permits or suffers to permit this work.

25 24. DEFENDANT has the legal burden to establish that each and every
26 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
27 required by California laws. The DEFENDANT, however, as a matter of uniform and
28 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS

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

6 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
7 CLASS Members is impracticable.

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

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

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

- 28 (a) The persons who comprise the CALIFORNIA CLASS are so numerous

1 that the joinder of all such persons is impracticable and the disposition of
2 their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
4 that are raised in this Complaint are common to the CALIFORNIA
5 CLASS will apply uniformly to every member of the CALIFORNIA
6 CLASS;

7 (c) The claims of the representative PLAINTIFF are typical of the claims of
8 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA CLASS, is classified as a non-
10 exempt employee paid on an hourly basis who has been subjected to the
11 DEFENDANT's deceptive practice and policy which failed to provide the
12 legally required meal and rest periods to the CALIFORNIA CLASS and
13 thereby systematically underpaid compensation to PLAINTIFF and
14 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
15 result of DEFENDANT's employment practices. PLAINTIFF and the
16 members of the CALIFORNIA CLASS were and are similarly or
17 identically harmed by the same unlawful, deceptive, unfair and pervasive
18 pattern of misconduct engaged in by DEFENDANT; and,

19 (d) The representative PLAINTIFF will fairly and adequately represent and
20 protect the interest of the CALIFORNIA CLASS, and has retained
21 counsel who are competent and experienced in Class Action litigation.
22 There are no material conflicts between the claims of the representative
23 PLAINTIFF and the members of the CALIFORNIA CLASS that would
24 make class certification inappropriate. Counsel for the CALIFORNIA
25 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
26 Members.

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

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

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

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

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

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

27 (c) Common questions of law and fact exist as to the members of the
28 CALIFORNIA CLASS, with respect to the practices and violations of

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

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

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

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

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

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

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

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

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

1 the CALIFORNIA CLASS;

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

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

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

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

1 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
5 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR
6 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
7 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
8 to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
9 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
10 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
11 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
12 SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

itemized wage statements;

(c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;

(d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

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

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

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

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

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

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

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

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

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

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

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

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS which
9 would establish incompatible standards of conduct for the parties
10 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment

1 will obviate the need for unduly and unnecessary duplicative
2 litigation that is likely to result in the absence of certification of
3 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

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

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

28 Any person who engages, has engaged, or proposes to engage in unfair

1 competition may be enjoined in any court of competent jurisdiction. The court
2 may make such orders or judgments, including the appointment of a receiver, as
3 may be necessary to prevent the use or employment by any person of any practice
4 which constitutes unfair competition, as defined in this chapter, or as may be
5 necessary to restore to any person in interest any money or property, real or
6 personal, which may have been acquired by means of such unfair competition.

7 Cal. Bus. & Prof. Code § 17203.

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

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

20 45. By the conduct alleged herein, DEFENDANT's practices are deceptive and
21 fraudulent in that DEFENDANT's uniform policy and practice fails to provide the legally
22 mandated meal and rest periods, and the required amount of compensation for missed meal and
23 rest periods, reporting time pay, and overtime and minimum wages owed, due to a systematic
24 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
25 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
26 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
27 Prof. Code § 17203, including restitution of wages wrongfully withheld.

28 46. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
and deceptive in that DEFENDANT's employment practices cause PLAINTIFF and the other
members of the CALIFORNIA CLASS to be underpaid during their employment with

1 DEFENDANT.

2 47. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
3 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
4 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
5 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

25 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
26 and do, seek such relief as may be necessary to restore to them the money and property which
27 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and

1 unfair business practices, including earned but unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

23 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
25 the correct reporting time pay and minimum wage compensation for their time worked for
26 DEFENDANT.

27 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked than

1 they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
2 accurately pay the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the
3 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
5 permitted or suffered to work, and do in fact work, off the clock time as to which
6 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
7 records and witnessed by employees.

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

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

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

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

1 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
2 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
3 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
4 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6
7 **THIRD CAUSE OF ACTION**

8 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

27 73. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including reporting time pay and minimum wage and overtime compensation and interest

1 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
2 employment of an employee for longer hours than those fixed by the Industrial Welfare
3 Commission is unlawful.

4 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members are required by DEFENDANT to work for
6 DEFENDANT and are not paid for all the time they work, including overtime work.

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

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

21 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
22 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
23 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
24 including overtime work.

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

28 77. 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
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
4 to a valid collective bargaining agreement that would preclude the causes of action contained
5 herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the
6 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
7 non-waiveable rights provided by the State of California.

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

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for
2 overtime worked.

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

11 83. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
13 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
14 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
15 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

17
18 **FOURTH CAUSE OF ACTION**

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

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

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

23 84. PLAINTIFF, 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
25 of this Complaint.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

11 (1) gross wages earned,

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

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

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

20 (5) net wages earned,

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

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

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

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

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

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

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LABOR SUB-CLASS members, DEFENDANT fails to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

C) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and,

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

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

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

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

Dated: June 4, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 4, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff