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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

NOV 06 2020

F. Roa

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

MICHAEL NASH, on behalf of the State
 of California, as a private attorney
 general,

Plaintiff,

vs.

K. HOVNANIAN COMPANIES, LLC, a
 California Limited Liability Company;
 and DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2000061

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).

BY FAX

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

6 7 INTRODUCTION

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

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

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

23 24 THE PARTIES

25 4. Defendant K. Hovnanian Companies, LLC ("DEFENDANT") is a limited liability
26 company that at all relevant times mentioned herein conducted and continues to conduct
27 substantial business in the state of California.

28 5. Defendant operates as a home construction and building company. The Company

1 specializes in constructing and designing residential homes. K Hovnanian Companies provides
2 building, construction, designing, and project management services.

3 6. PLAINTIFF was employed by DEFENDANT in California from September of
4 2018 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt
5 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
6 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
19 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
20 was from time to time interrupted by work assignments while clocked out for what should have
21 been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other AGGRIEVED
22 EMPLOYEES forfeited minimum wage and overtime compensation by working without their
23 time being accurately recorded and without compensation at the applicable minimum wage and
24 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
25 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
26 records.

27 12. In addition, State and federal law provides that employees must be paid overtime
28 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED

1 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
2 elements of an employee's performance.

3 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
4 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
5 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
6 DEFENDANT, including but not limited to commission wages. The non-discretionary
7 incentive program provided all employees paid on an hourly basis with incentive compensation
8 when the employees met the various performance goals set by DEFENDANT. However, when
9 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
11 part of the employees' "regular rate of pay" for purposes of calculating overtime pay.
12 Management and supervisors described the incentive program to potential and new employees
13 as part of the compensation package. As a matter of law, the incentive compensation received
14 by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate
15 of pay." The failure to do so has resulted in an underpayment of overtime compensation to
16 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

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

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

23 16. DEFENDANT as a matter of corporate policy, practice and procedure,
24 intentionally and knowingly failed to reimburse and indemnify the PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and
26 other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf
27 of DEFENDANT. Under California Labor Code Section 2802, employers are required to
28 indemnify employees for all expenses incurred in the course and scope of their employment.

1 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
2 for all necessary expenditures or losses incurred by the employee in direct consequence of the
3 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
4 though unlawful, unless the employee, at the time of obeying the directions, believed them to
5 be unlawful."

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

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

1 time to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
2 statements which violated Cal. Lab. Code § 226.

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

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

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

25 **JURISDICTION AND VENUE**

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

28 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,

1 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
2 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
3 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
4 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
5 AGGRIEVED EMPLOYEES.

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

27. On June 4, 2020, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See **Exhibit #1***, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

PRAYER FOR RELIEF

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

1. On behalf of the State of California and with respect to all AGGRIEVED

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

EMPLOYEES:

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

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

Dated: November 5, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: 

Norman B. Blumenthal
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

CA2097

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**K. Hovnanian Companies, LLC
Certified Mail # 70192280000189179042
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833**

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 K. Hovnanian Companies, LLC 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 Michael Nash (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant K. Hovnanian Companies, LLC (“Defendant”). Plaintiff was employed by Defendant in California as a Sales Assistant from September of 2018 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs.,

tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by 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**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

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

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

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

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

10 MICHAEL NASH, an individual, on
11 behalf of himself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 vs.

15 K. HOVNANIAN COMPANIES, LLC, a
16 California Limited Company; and DOES
17 1 through 50, inclusive,

18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiff Michael Nash (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:
4

5 THE PARTIES

6 1. Defendant K. Hovnanian Companies, LLC (“DEFENDANT”) is a limited liability
7 company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. Defendant operates as a home construction and building company. The Company
10 specializes in constructing and designing residential homes. K Hovnanian Companies provides
11 building, construction, designing, and project management services.

12 3. PLAINTIFF was employed by DEFENDANT in California from September of
13 2018 to January of 2020 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 24 THE CONDUCT

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

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
5 should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other
6 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
7 working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice
9 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
10 evidenced by DEFENDANT's business records.

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

15 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
16 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
17 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
18 performance for DEFENDANT, including but not limited to commission wages. The non-
19 discretionary incentive program provided all employees paid on an hourly basis with incentive
20 compensation when the employees met the various performance goals set by DEFENDANT.
21 However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and
22 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
23 compensation as part of the employees' "regular rate of pay" for purposes of calculating
24 overtime pay. Management and supervisors described the incentive program to potential and
25 new employees as part of the compensation package. As a matter of law, the incentive
26 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be
27 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of
28 overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by

1 DEFENDANT.

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

15 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
16 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
17 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
18 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
19 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
20 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
22 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
23 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
24 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
25 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
26 applicable California Wage Order requires employers to provide employees with off-duty rest
27 periods, which the California Supreme Court defined as time during which an employee is
28 relieved from all work related duties and free from employer control. In so doing, the Court

1 held that the requirement under California law that employers authorize and permit all
2 employees to take rest period means that employers must relieve employees of all duties and
3 relinquish control over how employees spend their time which includes control over the
4 locations where employees may take their rest period. Employers cannot impose controls that
5 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
6 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
7 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
8 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
9 during their rest period.

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

21 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of their personal cellular phones and personal vehicles for
26 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
27 were required by DEFENDANT to use their personal cell phones and to also travel for
28 DEFENDANT for work related issues. As a result, in the course of their employment with

1 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
2 unreimbursed business expenses which included, but were not limited to, costs related to the use
3 of their personal cellular phones and personal vehicles all on behalf of and for the benefit of
4 DEFENDANT.

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

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

28 17. By reason of this uniform conduct applicable to PLAINTIFF and all

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

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

22 23 **JURISDICTION AND VENUE**

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

28 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,

1 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
2 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
3 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
4 committed the wrongful conduct herein alleged in this County against members of the
5 CALIFORNIA CLASS.

6 ///

7 ///

8 THE CALIFORNIA CLASS

9
10 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
12 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
13 all individuals who are or previously were employed by DEFENDANT in California and
14 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
15 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
16 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
17 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
18 (\$5,000,000.00).

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

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

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

10 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
11 CLASS Members is impracticable.

12 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
13 California law by:

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

1 the discharge of their job duties.

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

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

1 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
2 Members.

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

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

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

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

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

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

1 necessary to prevent and remedy the conduct declared to constitute
2 unfair competition;

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

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

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

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

22 B. Adjudications with respect to individual members of the
23 CALIFORNIA CLASS would as a practical matter be
24 dispositive of the interests of the other members not parties
25 to the adjudication or substantially impair or impede their
26 ability to protect their interests;

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting

1 their legal rights out of fear of retaliation by DEFENDANT, which
2 may adversely affect an individual's job with DEFENDANT or
3 with a subsequent employer, the Class Action is the only means to
4 assert their claims through a representative; and,

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

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

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices are
15 uniform and systematically applied with respect to the CALIFORNIA
16 CLASS;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 CLASS because in the context of employment litigation a substantial
20 number of individual CALIFORNIA CLASS Members will avoid
21 asserting their rights individually out of fear of retaliation or adverse
22 impact on their employment;
- 23 (c) The members of the CALIFORNIA CLASS are so numerous that it is
24 impractical to bring all members of the CALIFORNIA CLASS before the
25 Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
27 able to obtain effective and economic legal redress unless the action is
28

maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Defendant Wholesome

1 Harvest Baking, LLC and/or Defendant Bimbo Bakehouse LLC in California (the
2 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
3 the filing of the complaint and ending on the date as determined by the Court (the
4 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
5 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
6 Members is under five million dollars (\$5,000,000.00).

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

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

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

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

28 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay

1 compensation due to members of the CALIFORNIA LABOR SUB-
2 CLASS for missed meal and rest breaks in violation of the California
3 Labor Code and California regulations and the applicable California Wage
4 Order;

5 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS with accurate
7 itemized wage statements;

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

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

12 (e) Whether DEFENDANT's conduct was willful.

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

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

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

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

27 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-

1 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
2 meal breaks and the legally required off-duty rest breaks;

- 3 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
4 the CALIFORNIA LABOR SUB-CLASS members with necessary
5 expenses incurred in the discharge of their job duties; and,
6 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
7 when an employee is discharged or quits from employment, the employer
8 must pay the employee all wages due without abatement, by failing to
9 tender full payment and/or restitution of wages owed or in the manner
10 required by California law to the members of the CALIFORNIA LABOR
11 SUB-CLASS who have terminated their employment.

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

- 14 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
15 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
16 Members is impracticable and the disposition of their claims as a class
17 will benefit the parties and the Court;
18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 LABOR SUB-CLASS and will apply uniformly to every member of the
21 CALIFORNIA LABOR SUB-CLASS;
22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
24 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
25 was a non-exempt employee paid on an hourly basis who was subjected
26 to the DEFENDANT's practice and policy which failed to pay the correct
27 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
28 PLAINTIFF sustained economic injury as a result of DEFENDANT's

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

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

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

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

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

- 28 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted

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

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

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

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

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

27 B. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical

1 matter be dispositive of the interests of the other members
2 not parties to the adjudication or substantially impair or
3 impede their ability to protect their interests;

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

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

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

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

21 (b) A Class Action is superior to any other available method for the fair and
22 efficient adjudication of the claims of the members of the CALIFORNIA
23 LABOR SUB-CLASS because in the context of employment litigation a
24 substantial number of individual CALIFORNIA LABOR SUB-CLASS
25 Members will avoid asserting their rights individually out of fear of
26 retaliation or adverse impact on their employment;

27 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
28 numerous that it is impractical to bring all members of the CALIFORNIA

LABOR SUB-CLASS before the Court;

- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

2 (By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

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

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

8 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
9 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
10 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
11 competition as follows:

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

16 Cal. Bus. & Prof. Code § 17203.

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

24 44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
25 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
26 unscrupulous or substantially injurious to employees, and were without valid justification or
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section
28 17203 of the California Business & Professions Code, including restitution of wages wrongfully

1 withheld.

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

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

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

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

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

27 50. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

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

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

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

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

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

26
27 **SECOND CAUSE OF ACTION**

28 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

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

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

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

25 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
26 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
27 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
28 these employees for all overtime worked, including, work performed in excess of eight (8)

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

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

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

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

1 applicable laws and regulations.

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

2 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

5
6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

1 workday that rest period was not provided.

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

6
7 **SIXTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

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

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

25
26 **SEVENTH CAUSE OF ACTION**

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

28 **[Cal. Lab. Code § 226]**

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

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

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

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

99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.

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

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

22 ///

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24
25 **EIGHTH CAUSE OF ACTION**

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

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

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

1 **Defendants)**

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

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

6 As used in this article:

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

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

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

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

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

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

22 106. Cal. Lab. Code § 203 provides:

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

26 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
27 Members has terminated and DEFENDANT has not tendered payment of wages, to these
28

1 employees, as required by law.

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

8
9
10 **PRAYER FOR RELIEF**

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

13 1. On behalf of the CALIFORNIA CLASS:

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

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

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

1 damages for minimum and overtime compensation due PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
3 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
4 statutory rate;

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

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

13 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
14 the applicable IWC Wage Order;

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

18 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
19 1197.

20 3. On all claims:

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

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

23 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
24 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
25 §2802.

1 Dated: June 4, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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3 By: _____
4 Norman B. Blumenthal
5 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