

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

ENDORSED
FILED
San Francisco County Superior Court

OCT 30 2020

CLERK OF THE COURT
By JACQUELINE LA PREVOTTE
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

10 MATTHEW O'DONNELL, on behalf of
11 the State of California, as a private
attorney general,

12 Plaintiff,

13 vs.

14 OKTA, INC., a Corporation; and Does 1
15 through 50, Inclusive,

16 Defendants.

Case No. **CAC-20-587742**

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).

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

6 INTRODUCTION

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

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

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

22 THE PARTIES

23 4. Defendant Okta, Inc. ("DEFENDANT") is a corporation that at all relevant times
24 mentioned herein conducted and continues to conduct substantial and regular business
25 throughout California.

26 5. DEFENDANT is a publicly traded identity and access management company
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1 based in San Francisco. It provides cloud software that helps companies manage and secure user
2 authentication into modern applications, and for developers to build identity controls into
3 applications, website web services and devices.

4 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
5 employee entitled to overtime pay and meal and rest periods from July of 2019 to July of 2020.
6 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
7 exempt employee paid in whole or in part on an hourly basis and received additional
8 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
9 but not limited to, performance bonus wages and commission wages.

10 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, brings this Representative Action on behalf of the State of California with respect to
13 himself and all individuals who are or previously were employed by DEFENDANT in
14 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
15 during the time period of July 31, 2019 until a date as determined by the Court (the "PAGA
16 PERIOD").

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

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

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

15 16 **THE CONDUCT**

17 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
18 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all
19 their time worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate
20 minimum and overtime wages for all time worked by PLAINTIFF and other AGGRIEVED
21 EMPLOYEES in order to avoid paying these employees the correct minimum wage and
22 overtime compensation. Specifically, DEFENDANT required PLAINTIFF to work while
23 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
24 was from time to time interrupted by work assignments. As a result, PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES forfeited wages due them for working without compensation at
26 the correct minimum wage and overtime rates. DEFENDANT's practice to not pay the
27 AGGRIEVED EMPLOYEES the correct overtime rate for all overtime worked in accordance
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1 with applicable law is evidenced by DEFENDANT's business records. This conduct of
2 DEFENDANT was intended to purposefully avoid the payment of the correct California and
3 federal overtime compensation as required by the Fair Labor Standards Act which allowed
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law.

6 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
7 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees worked. DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES
9 to work off the clock without paying them for all the time they were under DEFENDANT's
10 control, specifically by requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to respond
11 to work inquiries while off the clock and also show up to work prior their work shift in order
12 to prospect for sales leads. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES
13 forfeited time worked by working without their time being accurately recorded and without
14 compensation at the applicable minimum wage and overtime rates. To the extent that the time
15 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
16 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
17 1197, and 1197.1.

18 13. State and federal law provides that employees must be paid overtime at one-and-
19 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
20 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
21 employee's performance.

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

10 15. In violation of the applicable sections of the California Labor Code and the
11 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
12 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES at the correct rate of pay for all overtime worked. This conduct of
14 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
15 compensation as required by California law which allowed DEFENDANT to illegally profit and
16 gain an unfair advantage over competitors who complied with the law. To the extent equitable
17 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
18 PAGA PERIOD should be adjusted accordingly.

19 16. As a result of their rigorous work schedules, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
21 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
23 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
24 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
25 off-duty meal period from time to time in which these employees were required by
26 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
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1 accordance with DEFENDANT's strict corporate policy and practice.

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

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
25 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
26 to show, among other things, the correct gross and net wages earned and correct amount of time
27 worked. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
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1 employees with an accurate itemized wage statement in writing showing, among other things,
2 gross wages earned and all applicable hourly rates in effect during the pay period and the
3 corresponding amount of time worked at each hourly rate. Aside, from the violations listed
4 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
5 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
6 DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

8 19. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
9 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
10 to accurately calculate and record the correct overtime rate for the overtime worked by
11 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
12 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
13 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
14 calculate and/or pay all required overtime compensation for work performed by the
15 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
16 promulgated thereunder as herein alleged.

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

22 23 **JURISDICTION AND VENUE**

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

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

4 **FIRST CAUSE OF ACTION**

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

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

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

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

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

20 25. PLAINTIFF, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, brings this Representative Action on behalf of the State of California
23 with respect to himself and all individuals who are or previously were employed by
24 DEFENDANT in California and who were classified as non exempt employees
25 ("AGGRIEVED EMPLOYEES") during the time period of July 31, 2019 until a date as
26 determined by the Court (the "PAGA PERIOD").

27 26. On July 31, 2020, PLAINTIFF gave written notice by electronic mail to the
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1 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
4 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
5 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
6 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
7 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

21
22 **PRAYER FOR RELIEF**

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

- 25 1. On behalf of the State of California and with respect to all AGGRIEVED
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

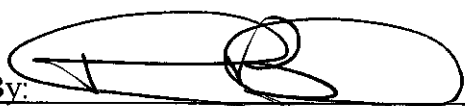
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EMPLOYEES:

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: October 30, 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

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

July 31, 2020

CA2198

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Okta, Inc.
Certified Mail #70200640000074884280
Jonathan Runyan
100 First Street, Suite 600
San Francisco, CA 94105

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 Okta, Inc. in California and classified as non-exempt employees during the time period of July 31, 2019 until a date as determined by the Court. Our offices represent Plaintiff Matthew O’Donnell (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Okta, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a Business Development Representative from July of 2019 to July of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd.

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MATTHEW O'DONNELL, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant Okta, Inc. ("DEFENDANT") is a corporation that at all relevant times
7 mentioned herein conducted and continues to conduct substantial and regular business
8 throughout California.

9 2. DEFENDANT is a publicly traded identity and access management company
10 based in San Francisco. It provides cloud software that helps companies manage and secure user
11 authentication into modern applications, and for developers to build identity controls into
12 applications, website web services and devices.

13 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
14 employee entitled to overtime pay and meal and rest periods from July of 2019 to July of 2020.
15 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
16 exempt employee paid in whole or in part on an hourly basis and received additional
17 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
18 but not limited to, performance bonus wages and commission wages.

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

26 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
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1 the CALIFORNIA CLASS PERIOD caused by DEFENDANT who failed to lawfully
2 compensate these employees for all their overtime worked. DEFENDANT's actions alleged
3 herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
4 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
6 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
7 the other members of the CALIFORNIA CLASS who have been economically injured by
8 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
9 equitable relief.

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

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

27 ///

THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all their time worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate minimum and overtime wages for all time worked by PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees the correct minimum wage and overtime compensation. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for working without compensation at the correct minimum wage and overtime rates. DEFENDANT's practice to not pay the members of the CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's business records. This conduct of DEFENDANT was intended to purposefully avoid the payment of the correct California and federal overtime compensation as required by the Fair Labor Standards Act which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law.

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees worked. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock without paying them for all the time they were under DEFENDANT's control, specifically by requiring PLAINTIFF and the CALIFORNIA CLASS Members to respond to work inquiries while off the clock. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. To the extent that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

10. State and federal law provides that employees must be paid overtime at one-and-

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

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

19 12. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
21 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
22 CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This conduct of
23 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
24 compensation as required by California law which allowed DEFENDANT to illegally profit and
25 gain an unfair advantage over competitors who complied with the law. To the extent equitable
26 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the
27 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

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

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

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

27 18. On or around May15, 2020, PLAINTIFF consulted with a Dr. at an emergency
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1 room regarding health issues PLAINTIFF had been experiencing from a fall he suffered while
2 running on May 15th, 2020. PLAINTIFF's Dr. diagnosed PLAINTIFF as having a concussion
3 amongst other injuries, including but not limited to his shoulder, and advised PLAINTIFF to
4 immediately go on leave. PLAINTIFF adhered to the Dr.'s orders and his leave began on May
5 15, 2020. His disability leave was approved by a 3rd party provider and PLAINTIFF stayed on
6 leave until on or around June 11, 2020. On or around June 12, 2020 PLAINTIFF returned to
7 work part time. On or around July 10, 2020, DEFENDANT terminated PLAINTIFF's
8 employment in violation of various fundamental public policies underlying both state and
9 federal laws. Specifically, PLAINTIFF's employment was terminated in part because of his
10 protected status (i.e., disability, medical leave, and/or good faith complaints). These actions
11 were in violation of FEHA, the California Constitution, and California Labor Code Section
12 1102.5. DEFENDANT's termination letter further informed PLAINTIFF that in addition to
13 being out of a job, his health coverage under DEFENDANT's plan was also immediately
14 terminated. Prior to filing this action, PLAINTIFF exhausted his administrative remedies by
15 filing a timely administrative complaint with the Department of Fair Employment and Housing
16 ("DFEH") and received a DFEH right-to-sue letter on .

17 18 **JURISDICTION AND VENUE**

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

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

1 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

25 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
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1 law by:

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

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

- 27 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
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1 that the joinder of all such persons is impracticable and the disposition of
2 their claims as a class will benefit the parties and the Court;

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

6 (c) The claims of the representative PLAINTIFF are typical of the claims of
7 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
8 other members of the CALIFORNIA CLASS, was subjected to the
9 employment practices of DEFENDANT and was a non-exempt employee
10 paid on an hourly basis and paid additional non-discretionary incentive
11 wages who was subjected to the DEFENDANT's practice and policy
12 which fails to pay the correct rate of overtime wages due to the
13 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA
14 CLASS and thereby underpays overtime compensation to the
15 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
16 result of DEFENDANT's employment practices. PLAINTIFF and the
17 members of the CALIFORNIA CLASS were and are similarly or
18 identically harmed by the same unlawful, deceptive, unfair and pervasive
19 misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

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

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

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

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

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

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

3) In the context of wage litigation because a substantial number of

individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

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

32. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been intentionally subjected to DEFENDANT's conduct 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

33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh causes of Action on behalf of a California sub-class, defined as all members of the

1 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
2 SUB-CLASS”) at any time during the period beginning on the date three (3) years prior to the
3 filing of the complaint and ending on the date as determined by the Court (the “CALIFORNIA
4 LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in
5 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
6 five million dollars (\$5,000,000.00).

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

19 35. 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 intentionally
21 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFF will seek leave to amend
22 the complaint to include any additional job titles of similarly situated employees when they have
23 been identified.

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

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

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 overtime compensation to members of the CALIFORNIA LABOR SUB-
3 CLASS in violation of the California Labor Code and California
4 regulations and the applicable California Wage Order;
- 5 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
6 entitled to overtime compensation for overtime worked under the overtime
7 pay requirements of California law;
- 8 (c) Whether DEFENDANT failed to accurately record the applicable
9 overtime rates for all overtime worked PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS;
- 11 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with legally
13 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 14 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with accurate
16 itemized wage statements;
- 17 (f) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
- 19 (g) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
- 21 (h) Whether DEFENDANT's conduct was willful.

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

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

- 5 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
6 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
7 CLASS the correct overtime pay for which DEFENDANT is liable
8 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 9 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
10 accurately pay PLAINTIFF and the members of the CALIFORNIA
11 LABOR SUB-CLASS the correct minimum wage pay for which
12 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 13 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
16 meal breaks and the legally required rest breaks; and,
- 17 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
18 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
19 itemized statement in writing showing all accurate and applicable
20 overtime rates in effect during the pay period and the corresponding
21 amount of time worked at each overtime rate by the employee; and,
- 22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the employer
24 must pay the employee all wages due without abatement, by failing to
25 tender full payment and/or restitution of wages owed or in the manner
26 required by California law to the members of the CALIFORNIA LABOR
27 SUB-CLASS who have terminated their employment.

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

3 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
4 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
5 Members is impracticable and the disposition of their claims as a class
6 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 LABOR SUB-CLASS and will apply to every member of the
10 CALIFORNIA LABOR SUB-CLASS;

11 (c) The claims of the representative PLAINTIFF are typical of the claims of
12 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
13 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
14 was a non-exempt employee paid on an hourly basis and paid additional
15 non-discretionary incentive wages who was subjected to the
16 DEFENDANT's conduct which failed to pay the correct rate of overtime
17 wages due to the CALIFORNIA LABOR SUB-CLASS for all overtime
18 worked. PLAINTIFF sustained economic injury as a result of
19 DEFENDANT's employment practices. PLAINTIFF and the members of
20 the CALIFORNIA LABOR SUB-CLASS were and are similarly or
21 identically harmed by the same unlawful, deceptive, unfair and pervasive
22 misconduct engaged in by DEFENDANT; and,

23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
25 retained counsel who are competent and experienced in Class Action
26 litigation. There are no material conflicts between the claims of the
27 representative PLAINTIFF and the members of the CALIFORNIA
28

1 LABOR SUB-CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
3 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

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

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

26 (c) Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28

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

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

1 with DEFENDANT or with a subsequent employer, the Class
2 Action is the only means to assert their claims through a
3 representative; and,

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

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

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

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA LABOR SUB-CLASS;

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

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

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT. The
13 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
14 CLASS Members classified as non-exempt employees during the
15 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

20
21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

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

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

25 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

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

3 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
4 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
5 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
6 competition as follows:

7 Any person who engages, has engaged, or proposes to engage in unfair
8 competition may be enjoined in any court of competent jurisdiction. The court
9 may make such orders or judgments, including the appointment of a receiver, as
10 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.

11 Cal. Bus. & Prof. Code § 17203.

12 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 204, 206.5, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, The Fair Labor
16 Standards Act and federal regulations promulgated thereunder, for which this Court should
17 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may
18 be necessary to prevent and remedy the conduct held to constitute unfair competition, including
19 restitution of wages wrongfully withheld.

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

26 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
27 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
28

1 CALIFORNIA CLASS, minimum and overtime wages for all time worked, failed to accurately
2 to record the applicable rate of all overtime worked, and failed to provide the required amount
3 of overtime compensation due to a miscalculation of the overtime rate that cannot be justified,
4 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
5 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
6 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
7 wrongfully withheld.

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

12 50. By the conduct alleged herein, DEFENDANT's practices were also unfair and
13 deceptive in that DEFENDANT failed to provide mandatory meal and/or rest breaks to
14 PLAINTIFF and the CALIFORNIA CLASS members.

15 51. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
16 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
17 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
18 for each workday in which a second off-duty meal period was not timely provided for each ten
19 (10) hours of work.

20 52. PLAINTIFF further demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty
22 paid rest period was not timely provided as required by law.

23 53. By and through the unlawful and unfair business practices described herein,
24 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
25 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
26 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
27 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
28

1 to unfairly compete against competitors who comply with the law.

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

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

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

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

23
24 **SECOND CAUSE OF ACTION**

25 **For Failure To Pay Overtime Compensation**

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

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

Defendants)

58. 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.

59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANT unlawfully and intentionally denied timely payment of wages due for the overtime worked by PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these employees
2 the correct applicable overtime wages for all overtime worked.

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

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

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

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

21 68. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
25 to a valid collective bargaining agreement that would preclude the causes of action contained
26 herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of himself and the
27 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
28

1 non-waiveable rights provided by the State of California.

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

5 70. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
7 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
8 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
10 to accurately record and pay using the applicable overtime rate as evidenced by
11 DEFENDANT's business records and witnessed by employees.

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

18 72. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
20 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
21 to not pay employees for their labor and DEFENDANT perpetrated this scheme by refusing to
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
23 applicable overtime rate.

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

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

17
18 **THIRD CAUSE OF ACTION**

19 **For Failure To Pay Minimum Wages**

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

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

22 **and Against All Defendants)**

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

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

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
3 CALIFORNIA CLASS Members.

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

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

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

11 80. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
13 time they work. As set forth herein, DEFENDANT unlawfully and intentionally denied timely
14 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
15 SUB-CLASS.

16 81. DEFENDANT's unlawful wage and hour practices manifested, without
17 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
18 denying accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS in regards to minimum wage pay.

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

26 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

2 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
3 required, permitted or suffered PLAINTIFFS and LABOR SUB-CLASS members to work
4 without paying them for all the time they were under DEFENDANT'S control. PLAINTIFFS
5 and the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time
6 worked that they were entitled to, constituting a failure to pay all earned wages.

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

13 86. DEFENDANT knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
15 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
16 to not pay employees for their labor and DEFENDANT perpetrated this scheme by refusing to
17 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
18 correct minimum wages for their time worked.

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

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

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

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

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

20 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time,
21 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF
22 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable
23 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being
25 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
26 rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
27 Members were from time to time not fully relieved of duty by DEFENDANT for their meal
28

1 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
2 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour
3 of work is evidenced by DEFENDANT's business records from time to time. As a result,
4 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
5 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
6 strict corporate policy and practice.

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

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

16
17 **FIFTH CAUSE OF ACTION**

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

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

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

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

25 94. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
26 time to time required to work in excess of four (4) hours without being provided ten (10) minute
27 rest periods. Further, these employees were denied their first rest periods of at least ten (10)

1 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
2 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
3 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
4 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
5 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
6 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
7 Members were periodically denied their proper rest periods by DEFENDANT and
8 DEFENDANT's managers.

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

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

18 19 **SIXTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 226]**

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

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

27 98. Cal. Labor Code § 226 provides that an employer must furnish employees with
28

1 an “accurate itemized” statement in writing showing:

2 (1) gross wages earned,

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

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

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

11 (5) net wages earned,

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

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

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

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

20 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage
22 statements which failed to show, among other things, the correct gross and net wages earned
23 and correct amount of time worked. Cal. Lab. Code § 226 provides that every employer shall
24 furnish each of his or her employees with an accurate itemized wage statement in writing
25 showing, among other things, gross wages earned and all applicable hourly rates in effect during
26 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
27 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an

1 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
2 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of
3 the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
4 § 226.

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

16
17 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

26 As used in this article:

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

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

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

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

7 If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72
9 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
10 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
11 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.

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

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

15 If an employer willfully fails to pay, without abatement or reduction, in
16 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
17 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.

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

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

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4 **EIGHTH CAUSE OF ACTION**

5 **[Disability and/or Leave Discrimination and Retaliation For the Exercise of Rights**
6 **Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing**
7 **DEFENDANT's Failure to Provide Such Rights]**

8 **Violation of FEHA Government Section 12900, *et. seq.***

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

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

12 110. On or around May15, 2020, PLAINTIFF consulted with a Dr. at an emergency
13 room regarding health issues PLAINTIFF had been experiencing from a fall he suffered
14 while running on May 15th, 2020. PLAINTIFF's Dr. diagnosed PLAINTIFF as having a
15 concussion amongst other injuries, including but not limited to his shoulder, and advised
16 PLAINTIFF to immediately go on leave. PLAINTIFF adhered to the Dr.'s orders and his
17 leave began on May 15, 2020. His disability leave was approved by a 3rd party provider and
18 PLAINTIFF stayed on leave until on or around June 11, 2020. On or around June 12, 2020
19 PLAINTIFF returned to work part time. On or around July 10, 2020, DEFENDANT
20 terminated PLAINTIFF's employment in violation of various fundamental public policies
21 underlying both state and federal laws. Specifically, PLAINTIFF's employment was
22 terminated in part because of his protected status (i.e., disability, medical leave, and/or good
23 faith complaints). These actions were in violation of FEHA, the California Constitution,
24 and California Labor Code Section 1102.5. DEFENDANT's termination letter further
25 informed PLAINTIFF that in addition to being out of a job, his health coverage under
26 DEFENDANT's plan was also immediately terminated.

27 111. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
28 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,

1 including the following bases for liability:

2 a. Taking adverse employment actions against PLAINTIFF, including
3 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
4 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
5 PLAINTIFF's disability;

6 b. Retaliating against PLAINTIFF for seeking to exercise rights
7 guaranteed under FEHA, participating in protected activities, and/or opposing
8 DEFENDANT's failure to provide such rights.

9 112. As a proximate result of DEFENDANT's willful, knowing, and intentional
10 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
11 substantial losses of earnings and other employment benefits.

12 113. As a proximate result of DEFENDANT's willful, knowing, and intentional
13 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
14 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage
15 in a sum according to proof.

16 114. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
17 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
18 reasonable attorneys' fees and costs (including expert costs) in an amount according to
19 proof.

20 115. DEFENDANT's misconduct was committed intentionally, in a malicious,
21 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
22 against DEFENDANT.

23
24 **NINTH CAUSE OF ACTION**

25 **[Failure to Prevent Discrimination, Harassment, and/or Retaliation]**

26 **Government Code Section 12940(k)**

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

1 116. PLAINTIFF realleges and incorporates by reference, as though fully set forth
2 herein, the prior paragraphs of this Complaint.

3 117. On or around May15, 2020, PLAINTIFF consulted with a Dr. at an emergency
4 room regarding health issues PLAINTIFF had been experiencing from a fall he suffered
5 while running on May 15th, 2020. PLAINTIFF's Dr. diagnosed PLAINTIFF as having a
6 concussion amongst other injuries, including but not limited to his shoulder, and advised
7 PLAINTIFF to immediately go on leave. PLAINTIFF adhered to the Dr.'s orders and his
8 leave began on May 15, 2020. His disability leave was approved by a 3rd party provider and
9 PLAINTIFF stayed on leave until on or around June 11, 2020. On or around June 12, 2020
10 PLAINTIFF returned to work part time. On or around July 10, 2020, DEFENDANT
11 terminated PLAINTIFF's employment in violation of various fundamental public policies
12 underlying both state and federal laws. Specifically, PLAINTIFF's employment was
13 terminated in part because of his protected status (i.e., disability, medical leave, and/or good
14 faith complaints). These actions were in violation of FEHA, the California Constitution,
15 and California Labor Code Section 1102.5. DEFENDANT's termination letter further
16 informed PLAINTIFF that in addition to being out of a job, his health coverage under
17 DEFENDANT's plan was also immediately terminated.

18 118. DEFENDANT's conduct, as alleged, violated the FEHA, Cal. Govt. Code
19 Section 12900, et seq., and DEFENDANT committed unlawful employment practices,
20 including, without limitation, by the following, separate bases for liability; failing to take all
21 reasonable steps to prevent discrimination, harassment, and/or retaliation based on physical
22 disability, medical condition, need for accommodation, taking leave, and/or good faith
23 complaints, in violation of Cal. Govt. Code section 12940(k).

24 119. As a proximate result of DEFENDANT's willful, knowing, and intentional
25 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
26 substantial losses of earnings and other employment benefits.

27 120. As a proximate result of DEFENDANT's willful, knowing, and intentional
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1 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
2 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage
3 in a sum according to proof.

4 121. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
5 fees. PLAINTIFF is as present unaware of the precise amounts of these expenses and fees
6 and will seek leave of the court to amend this Complaint when the amounts are fully known.

7 122. DEFENDANT's misconduct was committed intentionally, in a malicious,
8 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
9 against DEFENDANT.

10 **TENTH CAUSE OF ACTION**

11 **[Wrongful Termination of Employment in Violation of Public Policy]**

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

13 123. PLAINTIFF realleges and incorporates by reference, as though fully set forth
14 herein, the prior paragraphs of this Complaint.

15 124. On or around May15, 2020, PLAINTIFF consulted with a Dr. at an emergency
16 room regarding health issues PLAINTIFF had been experiencing from a fall he suffered
17 while running on May 15th, 2020. PLAINTIFF's Dr. diagnosed PLAINTIFF as having a
18 concussion amongst other injuries, including but not limited to his shoulder, and advised
19 PLAINTIFF to immediately go on leave. PLAINTIFF adhered to the Dr.'s orders and his
20 leave began on May 15, 2020. His disability leave was approved by a 3rd party provider and
21 PLAINTIFF stayed on leave until on or around June 11, 2020. On or around June 12, 2020
22 PLAINTIFF returned to work part time. On or around July 10, 2020, DEFENDANT
23 terminated PLAINTIFF's employment in violation of various fundamental public policies
24 underlying both state and federal laws. Specifically, PLAINTIFF's employment was
25 terminated in part because of his protected status (i.e., disability, medical leave, and/or good
26 faith complaints). These actions were in violation of FEHA, the California Constitution,
27 and California Labor Code Section 1102.5. DEFENDANT's termination letter further
28

1 informed PLAINTIFF that in addition to being out of a job, his health coverage under
2 DEFENDANT's plan was also immediately terminated.

3 125. DEFENDANT terminated PLAINTIFF's employment in violation of various
4 fundamental public policies underlying both state and federal laws. Specifically,
5 PLAINTIFF's employment was terminated in part because of his protected status (i.e.,
6 disability, medical leave, and/or good faith complaints). These actions were in violation of
7 fundamental public policy.

8 126. As a proximate result of DEFENDANT's wrongful termination of
9 PLAINTIFF's employment violation of fundamental public policies, PLAINTIFF has
10 suffered and continues to suffer humiliation, emotional distress, and physical and mental
11 pain and anguish, all to his damage in a sum according to proof.

12 127. As a result of DEFENDANT's wrongful termination of PLAINTIFF's
13 employment, PLAINTIFF has suffered general and special damages in sums according to
14 proof.

15 128. DEFENDANT's wrongful termination of PLAINTIFF's employment was
16 done intentionally, in a malicious, fraudulent, oppressive manner entitling PLAINTIFF to
17 punitive damages.

18 129. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
19 fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

20
21 **PRAYER FOR RELIEF**

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

24 1. On behalf of the CALIFORNIA CLASS:

25 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

27 B) An order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
5 fund for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
10 class action pursuant to Cal. Code of Civ. Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due PLAINTIFF and the other members
13 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
15 statutory rate;
16 C) Meal and rest period compensation pursuant to California Labor Code Section
17 226.7 and the applicable IWC Wage Order;
18 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
19 period in which a violation occurs and one hundred dollars (\$100) per each
20 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
21 subsequent pay period, not exceeding an aggregate penalty of four thousand
22 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
23 E) For liquidated damages pursuant to California Labor Code Sections 1194.2
24 and 1197; and,
25 F) The wages of all terminated employees from the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
27 or until an action therefore is commenced, in accordance with Cal. Lab. Code
28

§ 203.

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

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

4. On all claims:

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

Dated: July 27, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____

Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: July 27, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff