

Assigned for all purposes to: Torrance Courthouse, Judicial Officer: Deirdre Hill

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

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 LOS ANGELES

GEORGE WEST, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

SILVERCAR, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20TRCV00869

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant SILVERCAR, INC. (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the 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 Silvercar, Inc.(“DEFENDANT”) is a Corporation that at all relevant
24 times mentioned herein conducted and continues to conduct substantial business in the state of
25 California.

26 5. DEFENDANT provides car rental services. The Company offers exotic and
27 luxury automobiles for a daily rate.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from July of 2019 to
2 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

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

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

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

13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES' compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their performance for

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

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

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

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

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

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

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

26 19. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
28 a matter of company policy, practice and procedure, intentionally, knowingly and systematically

1 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
2 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
3 avoid the payment for all time worked as required by California law which allows
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
6 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

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

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

21 22 **JURISDICTION AND VENUE**

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

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

1 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
2 AGGRIEVED EMPLOYEES.

3 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

26 27. On July 31, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
27 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
28 the specific provisions of this code alleged to have been violated as required by Labor Code §

1 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The
2 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
3 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
4 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
5 to all AGGRIEVED EMPLOYEES as herein defined.

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

18 **PRAYER FOR RELIEF**

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

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

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

25 B) An award of attorneys' fees and cost of suit, as allowable under the
26

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

1 law, including, but not limited to, pursuant to Labor Code §2699.
2

3 Dated: November 23, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
4

5
6 By: /s/ Norman Blumenthal
7 Norman B. Blumenthal
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CA2129

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Silvercar, Inc.
Certified Mail #7020064000074884273
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811

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

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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

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

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 GEORGE WEST, an individual, on behalf
11 of himself and on behalf of all persons
similarly situated,

12
13 Plaintiff,

14 vs.

15 SILVERCAR, INC., a Corporation; and
16 DOES 1 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

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

9 2. DEFENDANT provides car rental services. The Company offers exotic and
10 luxury automobiles for a daily rate.

11 3. PLAINTIFF was employed by DEFENDANT in California from July of 2019 to
12 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
14 of minimum and overtime wages due for all time worked.

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

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

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

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

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

22 23 **THE CONDUCT**

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

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

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

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

25 11. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
28 other CALIFORNIA CLASS Members were required from time to time to perform work as

1 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
2 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
3 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
4 which these employees were required by DEFENDANT to work ten (10) hours of work from
5 time to time. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited
6 meal breaks without additional compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice. DEFENDANT failed to maintain adequate staffing levels while
8 increasing the production levels for each employee at the busy work sites they provided services
9 for.

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

1 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
2 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
3 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
4 during their rest period.

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

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

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

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

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

23 17. By reason of this uniform conduct applicable to PLAINTIFF and all
24 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
26 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
27 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
28 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is

1 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
2 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
3 required compensation for work performed by the members of the CALIFORNIA CLASS and
4 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

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

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 PLAINTIFF worked in this County for DEFENDANT, resides
25 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
26 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
27 committed the wrongful conduct herein alleged in this County against members of the
28 CALIFORNIA CLASS.

THE CALIFORNIA CLASS

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

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

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

24. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-

1 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
2 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

3 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

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

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

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
26 that the joinder of all such persons is impracticable and the disposition of
27 their claims as a class will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 CLASS will apply uniformly to every member of the CALIFORNIA
3 CLASS;

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

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be 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.

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

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

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

THE CALIFORNIA LABOR SUB-CLASS

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

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
3 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
5 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
6 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
7 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
8 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
9 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
10 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

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

above-listed conduct;

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

(e) Whether DEFENDANT's conduct was willful.

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

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

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

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

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

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

(f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to

1 tender full payment and/or restitution of wages owed or in the manner
2 required by California law to the members of the CALIFORNIA LABOR
3 SUB-CLASS who have terminated their employment.

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

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

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

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

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

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

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

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

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 the
4 fair and efficient adjudication of the controversy, including consideration
5 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 actions
9 will be avoided to recover the relatively small amount of economic
10 losses sustained by the individual CALIFORNIA LABOR SUB-
11 CLASS Members when compared to the substantial expense and
12 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
28 with DEFENDANT or with a subsequent employer, the Class

1 Action is the only means to assert their claims through a
2 representative; and,

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

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

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

1 the CALIFORNIA LABOR SUB-CLASS;

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

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

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

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

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

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

28 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

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

8 Cal. Bus. & Prof. Code § 17203.

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

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

22 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
24 mandated meal and rest periods, the required amount of compensation for missed meal and rest
25 periods, overtime, minimum, and reporting time wages owed, and failed to reimburse all
26 necessary business expenses incurred, due to a systematic business practice that cannot be
27 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

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

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

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

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

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

25 51. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California
27 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
28 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and

1 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

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

23 **and Against All Defendants)**

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

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

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

4 57. 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 58. 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 59. 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 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
14 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

2 64. 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 65. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS for the true time they worked, PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
9 injury in amounts which are presently unknown to them and which will be ascertained according
10 to proof at trial.

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

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

26 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
28 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided

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

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

25 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

28 83. In performing the acts and practices herein alleged in violation of California labor

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

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

19
20 **FOURTH CAUSE OF ACTION**

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

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

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

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

28 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time

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

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

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

25
26 **FIFTH CAUSE OF ACTION**

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5

6
7
8
9
0
1
2
3
4
5
6

7
8
9
20
21

22
23
24
25

27

28

1 [Cal. Lab. Code § 2802]

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

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

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

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

11 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
12 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
13 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
14 benefit. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
17 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
18 cost associated with the use of their personal cellular phones and personal vehicles for
19 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
20 were required by DEFENDANT to use their personal cell phones and personal vehicles for
21 work related issues. As a result, in the course of their employment with DEFENDANT,
22 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
23 expenses which included, but were not limited to, costs related to the use of their personal
24 cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANT.
25 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
26 download and use a phone application named "Insperity" in order to log their hours worked.
27 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
28

1 phones in order to download the phone application. Further, PLAINTIFF and other
2 CALIFORNIA CLASS Members were required by DEFENDANT to use their own personal
3 vehicles in order to perform job tasks for DEFENDANT. As a result, in the course of their
4 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
5 CLASS also incurred unreimbursed business expenses related to the use of their personal
6 vehicles, on behalf of and for the benefit of DEFENDANT. These expenses were necessary to
7 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
8 assert any waiver of this expectation. Although these expenses were necessary expenses
9 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
10 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
11 SUB-CLASS members for these expenses as an employer is required to do under the laws and
12 regulations of California.

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

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

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

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

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

28 (1) gross wages earned,

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

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

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

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

14
15 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

24 As used in this article:

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

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

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

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

5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72
7 hours thereafter, unless the employee has given 72 hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages
9 at the time of quitting. Notwithstanding any other provision of law, an employee
10 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
12 mailing shall constitute the date of payment for purposes of the requirement to
13 provide payment within 72 hours of the notice of quitting.

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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