

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

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

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: [www.bamlawca.com](http://www.bamlawca.com)

11 Attorneys for Plaintiff

**ELECTRONICALLY FILED**

Superior Court of California,

County of Placer

**03/08/2021 at 02:54:17 PM**

by: Marina Olivarez Fuentes, Deputy Clerk

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

13 **IN AND FOR THE COUNTY OF PLACER**

14 ARIANA AESPESI, an individual, on  
15 behalf of herself and on behalf of all  
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 RES-CARE CALIFORNIA, INC., a  
20 Corporation; and DOES 1 through 50,  
21 inclusive,

22 Defendants.

Case No. S-CV-0046333

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Ariana Aespesi ("PLAINTIFF"), individual, on behalf of herself and all other  
2 similarly situated current and former employees, allege on information and belief, except their  
3 own acts and knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant Res-Care California, Inc. ("DEFENDANT") is a California corporation  
7 that conducts regular and substantial business in the State of California. DEFENDANT  
8 provides health care services. DEFENDANT offers home care, residential, youth, pharmacy,  
9 and workforce services.

10 2. PLAINTIFF has been employed by DEFENDANT in California as a Qualified  
11 Intellectual Disability Professional since July of 2017. At all times relevant during her  
12 employment with DEFENDANT, PLAINTIFF has been classified as a salaried employee  
13 exempt from overtime wages and other related benefits.

14 3. The position of a Qualified Intellectual Disability Professional was represented  
15 by DEFENDANT to PLAINTIFF and the other Marketing Specialists as an exempt and a  
16 salaried position.

17 4. The employees employed in the position with DEFENDANT as a Qualified  
18 Intellectual Disability Professional all perform the same primary job duty which is to provide  
19 day-to-day routine clerical work. PLAINTIFF and other Qualified Intellectual Disability  
20 Professionals perform the finite set of tasks of data input, attending appointments with clients,  
21 completing client summaries and notes, attending monthly and quarterly meetings and  
22 compiling waiting lists for potential consumer vacancies. Qualified Intellectual Disability  
23 Professionals perform all of their job functions according to established company policies,  
24 protocols and procedures. According to DEFENDANT's company policy, while performing  
25 the job functions of Qualified Intellectual Disability Professionals, the Qualified Intellectual  
26 Disability Professionals are required to work in excess of eight (8) hours each workday and  
27 more than forty (40) hours each workweek.

28 5. Given the circumstances of the job functions performed by the PLAINTIFF and

1 the other Qualified Intellectual Disability Professionals, the PLAINTIFF and other Qualified  
2 Intellectual Disability Professionals do not primarily perform office or non-manual work  
3 directly related to policymaking and/or the general business operations of DEFENDANT. The  
4 work of the PLAINTIFF and the other Qualified Intellectual Disability Professionals does not  
5 require special training, experience and/or knowledge and also does not involve the use of  
6 discretion and independent judgment with respect to matters of significance of the enterprise.  
7 Instead, the PLAINTIFF and the other Qualified Intellectual Disability Professionals' primary  
8 job duty is performing day-to-day routine clerical work.

9         6. The work schedule for the Qualified Intellectual Disability Professionals is set  
10 by DEFENDANT. Generally, PLAINTIFF and other Qualified Intellectual Disability  
11 Professionals work in excess of eight (8) hours in a workday and more than forty (40) hours in  
12 a workweek.

13         7. PLAINTIFF and the other Qualified Intellectual Disability Professionals  
14 members are not provided overtime compensation and other benefits required by law as a result  
15 of being classified as "exempt" by DEFENDANT.

16         8. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
17 defined as all persons who are or previously were employed by DEFENDANT in California as  
18 Qualified Intellectual Disability Professionals and were classified as exempt from overtime  
19 wages (the "CALIFORNIA CLASS") at any time during the period beginning on the date four  
20 (4) years prior to the filing of this complaint and ending on the date as determined by the Court  
21 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim  
22 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

23         9. DEFENDANT has unlawfully, unfairly and/or deceptively classified every  
24 Qualified Intellectual Disability Professional as exempt based on job title alone, failed to pay  
25 required overtime compensation and otherwise failed to comply with all applicable labor laws  
26 with respect to these Qualified Intellectual Disability Professionals.

27         10. The true names and capacities, whether individual, corporate, subsidiary,  
28 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

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

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

### 16 THE CONDUCT

17 12. The finite set of tasks required of the PLAINTIFF and the other Qualified  
18 Intellectual Disability Professionals as defined by DEFENDANT is executed by PLAINTIFF  
19 and other Qualified Intellectual Disability Professionals through the performance of non-  
20 exempt clerical labor within a defined skill set.

21 13. Although PLAINTIFF and the other Qualified Intellectual Disability Professionals  
22 primarily perform non-exempt clerical labor, DEFENDANT instituted a blanket classification  
23 policy, practice and procedure by which PLAINTIFF and other Qualified Intellectual Disability  
24 Professionals are classified as exempt from overtime compensation and other related benefits.  
25 By reason of this exemption practice, policy and procedure applicable to the PLAINTIFF and  
26 the other Qualified Intellectual Disability Professionals who perform this non-exempt labor,  
27 DEFENDANT committed acts of unfair competition in violation of the California Unfair  
28 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a

1 company-wide policy, practice and procedure which failed to properly classify PLAINTIFF and  
2 the other Qualified Intellectual Disability Professionals and thereby fail to pay them overtime  
3 wages for documented overtime hours worked. The proper classification of these employees  
4 is DEFENDANT’s legal burden. As a result of DEFENDANT’s intentional disregard of the  
5 obligation to meet this burden, DEFENDANT fails to pay all required overtime compensation  
6 for work performed by PLAINTIFF and other Qualified Intellectual Disability Professionals and  
7 violated the California Labor Code and regulations promulgated thereunder as herein alleged.  
8 In addition, DEFENDANT fails to provide all the legally required off-duty meal and rest breaks  
9 to the PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable  
10 Wage Order and Labor Code. DEFENDANT does not have a policy or practice which provides  
11 meal and rest breaks to PLAINTIFF and the other CALIFORNIA CLASS Members. As a  
12 result, DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS  
13 Members with legally required meal and rest breaks is evidenced by DEFENDANT’s business  
14 records which contain no record of these breaks.

15       14. DEFENDANT, as a matter of law, has the burden of proving that (a) employees  
16 are properly classified as exempt and that (b) DEFENDANT otherwise complied with  
17 applicable laws. Other than the initial classification of PLAINTIFF and the CALIFORNIA  
18 CLASS members as exempt from being paid overtime based on job title alone, DEFENDANT  
19 had no business policy, practice, or procedure to ensure that the PLAINTIFF and the  
20 CALIFORNIA CLASS members were properly classified as exempt, and in fact, as a matter  
21 of corporate policy erroneously and unilaterally classified the PLAINTIFF and the  
22 CALIFORNIA CLASS members as exempt based on job title alone.

23       15. PLAINTIFF and the CALIFORNIA CLASS members, primarily perform non-  
24 exempt job duties during their employment with DEFENDANT, but are nevertheless classified  
25 by DEFENDANT as exempt from overtime pay and work more than eight (8) hours a day and  
26 in excess of forty (40) hours a week.

27       16. PLAINTIFF and the CALIFORNIA CLASS members employed by  
28 DEFENDANT are not primarily engaged in work of a type that was or now is directly related

1 to the management or general business operation of the DEFENDANT, when giving these  
2 words a fair but narrow construction. PLAINTIFF and the CALIFORNIA CLASS members  
3 employed by DEFENDANT are also not primarily engaged in work of a type that was or now  
4 is performed at the level of the policy or management of DEFENDANT. PLAINTIFF and the  
5 CALIFORNIA CLASS members employed by DEFENDANT are also not primarily engaged  
6 in work requiring knowledge of an advanced type in a field or science or learning customarily  
7 acquired by a prolonged course of specialized intellectual instruction and study, but rather their  
8 work primarily involves the performance of routine mental, manual, and/or clerical processes.  
9 PLAINTIFF and the CALIFORNIA CLASS members employed by DEFENDANT are also not  
10 primarily engaged in work that is predominantly intellectual and varied in character, but rather  
11 is routine mental, manual, mechanical, and/or physical work that was of such character that the  
12 output produced or the result accomplished could be standardized in relation to a given period  
13 of time.

14       17. PLAINTIFF and the other CALIFORNIA CLASS members are classified as  
15 exempt from California overtime and related laws by DEFENDANT, however, these employees  
16 do not have managerial duties or authority. PLAINTIFF and the CALIFORNIA CLASS  
17 members perform ongoing day-to-day non-exempt activities. Furthermore, PLAINTIFF and  
18 other CALIFORNIA CLASS members are tightly controlled by company policy and by their  
19 managers, do not exercise discretion or independent judgment as to matters of significance, and  
20 their job duties are not directly related to DEFENDANT’s management policies or general  
21 business operation.

22       18. PLAINTIFF and all other CALIFORNIA CLASS members are and were  
23 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,  
24 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and other  
25 CALIFORNIA CLASS members, were properly classified under the applicable Industrial  
26 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
27 exempt from applicable California labor laws. Since DEFENDANT affirmatively and wilfully  
28 misclassified the PLAINTIFF and other Qualified Intellectual Disability Professionals in

1 compliance with California labor laws, DEFENDANT's practices violated and continue to  
2 violate California law. In addition, DEFENDANT acted deceptively by falsely and fraudulently  
3 telling the PLAINTIFF and other Qualified Intellectual Disability Professionals that they were  
4 exempt from overtime pay when DEFENDANT knew or should have known that this statement  
5 was false and not based on known facts. DEFENDANT also acted unfairly by violating the  
6 California labor laws, and as a result of this policy and practice, DEFENDANT also violated  
7 the UCL. In doing so, DEFENDANT cheated the competition by paying the CALIFORNIA  
8 CLASS less than the amount competitors paid who complied with the law and cheated the  
9 CALIFORNIA CLASS by not paying them in accordance with California law.

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

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

1 the directions, believed them to be unlawful."

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

11 22. By reason of this conduct applicable to the PLAINTIFF and all the  
12 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
14 (the "UCL"), by engaging in a company-wide policy and procedure which failed to correctly  
15 classify the PLAINTIFF and the members of the CALIFORNIA CLASS as non-exempt. The  
16 proper classification of these employees is DEFENDANT's burden. As a result of  
17 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
18 failed to properly calculate and/or pay all required overtime compensation for work performed  
19 by the members of the CALIFORNIA CLASS and violated the applicable Wage Order, the  
20 California Labor Code and the regulations promulgated thereunder as herein alleged.

21 23. PLAINTIFF has worked as a Qualified Intellectual Disability Professional since  
22 July of 2017 and has been classified by DEFENDANT as exempt from overtime wages and  
23 other related benefits. During the CALIFORNIA CLASS PERIOD, PLAINTIFF has worked  
24 in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek, but as  
25 a result of DEFENDANT's misclassification of PLAINTIFF as exempt from the applicable  
26 California Labor Code provisions, PLAINTIFF has not been compensated by DEFENDANT  
27 for her overtime worked at the applicable overtime rate. DEFENDANT also fails to provide  
28 all the legally required off-duty meal and rest breaks to the PLAINTIFF as required by the

1 applicable Wage Order and Labor Code. DEFENDANT does not have a policy or practice  
2 which provides meal and rest breaks to the PLAINTIFF and also fails to compensate the  
3 PLAINTIFF for her missed breaks. In addition, PLAINTIFF is not provided with accurate and  
4 itemized wage statements showing the gross wages earned, the net wages earned, all applicable  
5 hourly rates in effect during the pay period, including overtime hourly rates, and the  
6 corresponding number of hours worked at each hourly rate, by DEFENDANT in violation of  
7 Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF the overtime  
8 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.  
9 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
10 \$75,000.

11  
12 **THE CALIFORNIA CLASS**

13 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
15 Action, pursuant to California Code of Civil Procedure Section 382, on behalf of a California  
16 Class, defined as all persons who are or previously were employed by DEFENDANT in  
17 California as Qualified Intellectual Disability Professionals and were classified as exempt from  
18 overtime wages (the "CALIFORNIA CLASS") at any time during the period beginning on the  
19 date four (4) years prior to the filing of this complaint and ending on the date as determined by  
20 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the  
21 aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
22 (\$5,000,000.00).

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

26 26. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
27 Commission ("IWC") Wage Order Requirements, and the applicable provisions of California  
28 law, intentionally, knowingly, and wilfully, engages in a practice whereby DEFENDANT  
unfairly, unlawfully, and deceptively instituted a practice to ensure that the employees employed

1 in a Qualified Intellectual Disability Professional position are not properly classified as non-  
2 exempt from the requirements of California Labor Code §§ 510, *et seq.*

3 27. DEFENDANT has the burden of proof to make sure that each and every employee  
4 is properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*  
5 DEFENDANT, however, as a matter policy and procedure had in place during the  
6 CALIFORNIA CLASS PERIOD and still has in place a policy and practice that misclassifies  
7 the CALIFORNIA CLASS Members as exempt. DEFENDANT's policy and practice in place  
8 at all times during the CALIFORNIA CLASS PERIOD and currently in place is to classify each  
9 and every CALIFORNIA CLASS Member as exempt from the requirements of the California  
10 Labor Code §§ 510, *et seq.* This common business practice applicable to each and every  
11 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,  
12 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as  
13 causation, damages, and reliance are not elements of this claim.

14 28. At no time during PLAINTIFF'S employment with DEFENDANT has any  
15 Qualified Intellectual Disability Professional been reclassified as non-exempt from the  
16 applicable requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA  
17 CLASS Member was initially classified as exempt upon being hired.

18 29. Any individual declarations of any employees offered at this time purporting to  
19 indicate that one or more Qualified Intellectual Disability Professionals may have been properly  
20 classified is of no force or affect absent contemporaneous evidence that DEFENDANT's system  
21 did not misclassify PLAINTIFF and the other CALIFORNIA CLASS Members as exempt  
22 pursuant to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,  
23 DEFENDANT's business practice is unlawful, unfair and/or deceptive under the UCL and may  
24 be so adjudicated on a class-wide basis. As a result of the UCL violations, PLAINTIFF and the  
25 CALIFORNIA CLASS Members are entitled to compel DEFENDANT to provide restitutionary  
26 disgorgement of their ill-gotten gains into a fluid fund in order to restitute these funds to  
27 PLAINTIFF and the CALIFORNIA CLASS Members according to proof.

28 30. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA

1 CLASS Members is impracticable.

2 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
3 law by:

- 4 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
5 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively  
6 having in place company policies, practices and procedures that  
7 misclassified PLAINTIFF and the members of the CALIFORNIA CLASS  
8 as exempt;
- 9 (b) Committing an act of unfair competition in violation of the UCL, by  
10 unlawfully, unfairly, and/or deceptively failing to have in place a company  
11 policy, practice and procedure that accurately determines the amount of  
12 working time spent by PLAINTIFF and the members of the  
13 CALIFORNIA CLASS performing non-exempt labor;
- 14 (c) Committing an act of unfair competition in violation of the UCL, by  
15 having in place a company policy, practice and procedure that fails to  
16 reclassify as non-exempt those members of the CALIFORNIA CLASS  
17 whose actual tasks were comprised of non-exempt job functions;
- 18 (d) Committing an act of unfair competition in violation of the UCL, by  
19 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct  
20 overtime pay to PLAINTIFF and the members of the CALIFORNIA  
21 CLASS who are improperly classified as exempt, and retaining the unpaid  
22 overtime to the benefit of DEFENDANT; and,
- 23 (e) Committing an act of unfair competition in violation of the UCL, by  
24 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and  
25 the CALIFORNIA CLASS members.

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

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

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

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

6 (c) The claims of the representative PLAINTIFF are typical of the claims of  
7 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the  
8 other members of the CALIFORNIA CLASS, was initially classified as  
9 exempt upon hiring based on the defined corporate policies and practices  
10 and labored under DEFENDANT's procedure that fails to properly  
11 classify as a non-exempt PLAINTIFF and the members of the  
12 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a  
13 result of DEFENDANT's employment practices. PLAINTIFF and the  
14 members of the CALIFORNIA CLASS were and are similarly or  
15 identically harmed by the same unlawful, deceptive, and unfair pervasive  
16 misconduct engaged in by DEFENDANT by deceptively advising all  
17 Qualified Intellectual Disability Professionals that they were exempt from  
18 overtime wages based on the defined corporate policies and practices, and  
19 unfairly failing to pay overtime to these employees who were improperly  
20 classified as exempt; and,

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

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

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

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

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

16          (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
17 act on grounds generally applicable to the CALIFORNIA CLASS, making  
18 appropriate class-wide relief with respect to the CALIFORNIA CLASS  
19 as a whole in that DEFENDANT classified and treated the Qualified  
20 Intellectual Disability Professionals as exempt and, thereafter, failed to  
21 take proper steps to determine whether the Qualified Intellectual  
22 Disability Professionals were properly classified as exempt, and thereby  
23 denied these employees overtime wages as required by law;

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

equitable relief as may be necessary to 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 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 as a practical matter a substantial number of individual CALIFORNIA CLASS Members

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

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

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

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

- 1 (e) There is a community of interest in obtaining appropriate legal and
- 2 equitable relief for the acts of unfair competition, statutory violations and
- 3 other improprieties, and in obtaining adequate compensation for the
- 4 injuries which DEFENDANT's actions have inflicted upon the
- 5 CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
- 7 DEFENDANT are sufficient to adequately compensate the members of the
- 8 CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
- 10 to the CALIFORNIA CLASS, thereby making final class-wide relief
- 11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
- 13 the business records of DEFENDANT. The CALIFORNIA CLASS
- 14 consists of all DEFENDANT's Qualified Intellectual Disability
- 15 Professionals who were classified as exempt and who were employed in
- 16 California during the CALIFORNIA CLASS PERIOD; and,
- 17 (i) Class treatment provides manageable judicial treatment calculated to bring
- 18 an efficient and rapid conclusion to all litigation of all wage and hour
- 19 related claims arising out of the conduct of DEFENDANT as to the
- 20 members of the CALIFORNIA CLASS.

21 35. DEFENDANT maintains records from which the Court can ascertain and identify

22 by name and job title, each of DEFENDANT's employees who have been subjected to

23 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF

24 will seek leave to amend the Complaint to include any additional job titles of similarly situated

25 employees when they have been identified.

26 **THE CALIFORNIA LABOR SUB-CLASS**

27 36. PLAINTIFF further brings the Second, Third, Fourth, Fifth, and Sixth Causes of

28

1 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
2 CLASS who were employed by DEFENDANT in California (the "CALIFORNIA LABOR  
3 SUB-CLASS") at any time during the period beginning on the date four (4) years prior to the  
4 filing of this complaint and ending on the date as determined by the Court (the "CALIFORNIA  
5 LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil Procedure § 382. The  
6 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS  
7 Members is under five million dollars (\$5,000,000.00).

8 37. DEFENDANT, in violation of the applicable California Labor Code ("Labor  
9 Code"), and Industrial Welfare Commission ("IWC") Wage Order Requirements intentionally,  
10 knowingly, and wilfully misclassified the PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from overtime  
12 wages and other labor laws based on DEFENDANT's comprehensive policies and procedures  
13 in order to avoid the payment of overtime wages by misclassifying their positions as exempt  
14 from overtime wages and other labor laws. To the extent equitable tolling operates to toll  
15 claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA  
16 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

17 38. DEFENDANT maintains records from which the Court can ascertain and identify  
18 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS  
19 Members have been intentionally misclassified as exempt as a matter of DEFENDANT's  
20 corporate policies, practices and procedures. PLAINTIFF will seek leave to amend the  
21 Complaint to include these additional job titles when they have been identified.

22 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 26 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation  
27 to members of the CALIFORNIA LABOR SUB-CLASS in violation of  
28 the California Labor Code and California regulations and the applicable

1 California Wage Order;

2 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
3 non-exempt employees entitled to overtime compensation for overtime  
4 worked under the overtime pay requirements of California law;

5 (c) Whether DEFENDANT's policy and practice of classifying the  
6 CALIFORNIA LABOR SUB-CLASS Members as exempt from overtime  
7 compensation and failing to pay the CALIFORNIA LABOR SUB-CLASS  
8 Members overtime violate applicable provisions of California law;

9 (d) Whether DEFENDANT unlawfully fails to keep and furnish  
10 CALIFORNIA LABOR SUB-CLASS Members with accurate records of  
11 overtime worked; and,

12 (e) The proper measure of damages and penalties owed to the members of the  
13 CALIFORNIA LABOR SUB-CLASS.

14 41. DEFENDANT erroneously classifies all Qualified Intellectual Disability  
15 Professionals as exempt from overtime wages and other labor laws. All Qualified Intellectual  
16 Disability Professionals, including PLAINTIFF, perform the same finite set of tasks and are  
17 paid by DEFENDANT according to company procedures, which, as alleged herein above, fails  
18 to correctly pay overtime compensation. This business practice has been applied to each and  
19 every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this  
20 conduct can be adjudicated on a class-wide basis.

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

23 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby  
24 failing to pay PLAINTIFF and the members of the CALIFORNIA  
25 LABOR SUB-CLASS the correct overtime pay for a workday longer than  
26 eight (8) hours and/or a workweek longer than forty (40) hours for which  
27 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

28 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the

1 members of the CALIFORNIA LABOR SUB-CLASS who are improperly  
2 classified as exempt with an accurate itemized statement in writing  
3 showing the gross wages earned, the net wages earned, all applicable  
4 hourly rates in effect during the pay period and the corresponding amount  
5 of time worked at each hourly rate by the employee when these employees  
6 worked overtime from time to time in a pay period;

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

11 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and  
12 the CALIFORNIA CLASS members with necessary expenses incurred in  
13 the discharge of their job duties.

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

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

19 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are  
20 raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
21 CLASS and will apply to every member of the CALIFORNIA LABOR  
22 SUB-CLASS;

23 (c) The claims of the representative PLAINTIFF are typical of the claims of  
24 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,  
25 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
26 was improperly classified as exempt and denied overtime pay as a result  
27 of DEFENDANT's classification practices. PLAINTIFF and all the other  
28 members of the CALIFORNIA LABOR SUB-CLASS sustained economic

injuries arising from DEFENDANT's violations of the laws of California;  
and,

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
2 DEFENDANT classified and treated the Qualified Intellectual Disability  
3 Professionals as exempt and, thereafter, failed to take proper steps to  
4 determine whether the Qualified Intellectual Disability Professionals were  
5 properly classified as exempt, and thereby denied these employees  
6 overtime wages as required by law;

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

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

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

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

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

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

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

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

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

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

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

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

LABOR SUB-CLASS before the Court;

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

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

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

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

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were employed by DEFENDANT in California during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

### **JURISDICTION AND VENUE**

46. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc § 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action on behalf of similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc.

1 § 382.

2 47. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
3 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
4 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
5 in this County and/or conducts substantial business in this County, and (ii) committed the  
6 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS  
7 and CALIFORNIA LABOR SUB-CLASS.

8  
9 **FIRST CAUSE OF ACTION**

10 **For Unlawful Business Practices**

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

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

13 48. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
15 Complaint.

16 49. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
17 Code § 17021.

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

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

California Business & Professions Code § 17203.

51. By the conduct alleged herein, DEFENDANT has engaged and continues to  
engage in a business practice which violates California law, including but not limited to, the

1 applicable Wage Order(s), the California Code of Regulations, and the California Labor Code  
2 Sections 204, 210, 226.7, 510, 512, 1194, 1198 & 2802, and for which this Court should issue  
3 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be  
4 necessary to prevent and remedy the conduct held to constitute unfair competition, including  
5 restitution of wages wrongfully withheld.

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

11 53. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
12 fraudulent in that DEFENDANT's policy and practice is to represent to PLAINTIFF and other  
13 CALIFORNIA CLASS Members that they are exempt from overtime pay when in fact these  
14 representations are false and likely to deceive, for which this Court should issue injunctive and  
15 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
16 wrongfully withheld.

17 54. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair  
18 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other  
19 members of the CALIFORNIA CLASS to be underpaid during their employment with  
20 DEFENDANT.

21 55. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
22 deceptive in that DEFENDANT's policies, practices and procedures fail to provide mandatory  
23 meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

24 56. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty  
26 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
27 for each workday in which a second off-duty meal period was not timely provided for each ten  
28 (10) hours of work.

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

4 58. By and through the unlawful and unfair business practices described herein,  
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
6 other members of the CALIFORNIA CLASS and have deprived them of valuable rights and  
7 benefits guaranteed by law and contract, all to the detriment of these employees and to the  
8 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors  
9 who comply with the law.

10 59. All the acts described herein as violations of, among other things, the California  
11 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,  
12 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and  
13 unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute  
14 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §§  
15 17200, *et seq.*

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

21 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
22 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair  
23 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
24 engaging in any unlawful and unfair business practices in the future.

25 62. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
26 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
27 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
28 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the

1 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
2 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to  
3 engage in these unlawful and unfair business practices.

4  
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

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

13 64. Cal. Lab. Code § 510 states in relevant part:

14 Eight hours of labor constitutes a day's work. Any work in excess of eight hours  
15 in one workday and any work in excess of 40 hours in any one workweek and the  
16 first eight hours worked on the seventh day of work in any one workweek shall  
17 be compensated at the rate of no less than one and one-half times the regular rate  
18 of pay for an employee. Any work in excess of 12 hours in one day shall be  
19 compensated at the rate of no less than twice the regular rate of pay for an  
20 employee. In addition, any work in excess of eight hours on any seventh day of  
21 a workweek shall be compensated at the rate of no less than twice the regular rate  
22 of pay of an employee.

23 65. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of  
24 labor is entitled to one day's rest therefrom in seven."

25 66. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees  
26 to work more than six days in seven."

27 67. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime  
28 rate of compensation required to be paid to a nonexempt full-time salaried employee, the  
employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

68. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee  
receiving less than the legal minimum wage or the legal overtime compensation  
applicable to the employee is entitled to recover in a civil action the unpaid  
balance of the full amount of this minimum wage or overtime compensation,

1 including interest thereon, reasonable attorney's fees, and costs of suit.

2 69. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard  
3 conditions of labor fixed by the commission shall be the maximum hours of work and the  
4 standard conditions of labor for employees. The employment of any employee for longer hours  
5 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

6 70. DEFENDANT has intentionally designated certain employees as "exempt"  
7 employees, by their job title alone and without regard to DEFENDANT's realistic expectations  
8 and actual overall requirements of the job, including PLAINTIFF and the other members of the  
9 CALIFORNIA LABOR SUB-CLASS who work on the production and non-managerial side  
10 of DEFENDANT's business. This is done in an illegal attempt to avoid payment of overtime  
11 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission  
12 requirements.

13 71. For an employee to be exempt as a bona fide "executive," all the following criteria  
14 must be met and DEFENDANT has the burden of proving that:

- 15 (a) The employee's primary duty must be management of the enterprise, or of a  
16 customarily recognized department or subdivision; and,
- 17 (b) The employee must customarily and regularly direct the work of at least two (2)  
18 or more other employees; and,
- 19 (c) The employee must have the authority to hire and fire, or to command particularly  
20 serious attention to his or her recommendations on such actions affecting other  
21 employees; and,
- 22 (d) The employee must customarily and regularly exercise discretion and independent  
23 judgment; and,
- 24 (e) The employee must be primarily engaged in duties which meet the test of  
25 exemption.

26 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they  
27 all fail to meet the requirements of being an "executive" within the meaning of the applicable  
28 Wage Order.

1           72. For an employee to be exempt as a bona fide "administrator," all of the following  
2 criteria must be met and DEFENDANT has the burden of proving that:

- 3           (a) The employee must perform office or non-manual work directly related to  
4 management policies or general business operation of the employer; and,
- 5           (b) The employee must customarily and regularly exercise discretion and independent  
6 judgment; and,
- 7           (c) The employee must regularly and directly assist a proprietor or an exempt  
8 administrator; or,
- 9           (d) The employee must perform, under only general supervision, work requiring  
10 special training, experience, or knowledge; or,
- 11           (e) The employee must execute special assignments and tasks under only general  
12 supervision; and,
- 13           (f) The employee must be primarily engaged in duties which meet the test of  
14 exemption.

15 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
16 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
17 Order.

18           73. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
19 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
20 with to place an employee in the "professional" exempt category. For an employee to be exempt  
21 as a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
22 burden of proving that:

- 23           (a) The employee is primarily engaged in an occupation commonly recognized as a  
24 learned or artistic profession. For the purposes of this subsection, "learned or  
25 artistic profession" means an employee who is primarily engaged in the  
26 performance of:
  - 27           1) Work requiring knowledge of an advanced type in a field or science or  
28 learning customarily acquired by a prolonged course of specialized

- 1 intellectual instruction and study, as distinguished from a general
- 2 academic education and from an apprenticeship, and from training in the
- 3 performance of routine mental, manual, or physical processes, or work that
- 4 is an essential part or necessarily incident to any of the above work; or,
- 5 2) Work that is original and creative in character in a recognized field of
- 6 artistic endeavor, and the result of which depends primarily on the
- 7 invention, imagination or talent of the employee or work that is an
- 8 essential part of or incident to any of the above work; and,
- 9 3) Whose work is predominately intellectual and varied in character (as
- 10 opposed to routine mental, manual, mechanical, or physical work) and is
- 11 of such character cannot be standardized in relation to a given period of
- 12 time.
- 13 (b) The employee must customarily and regularly exercise discretion and independent
- 14 judgment; and,
- 15 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
- 16 state minimum wage for full-time employment.

17 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they  
18 all fail to meet the requirements of being a "professional" within the meaning of the applicable  
19 Wage Order.

20 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
21 do not fit the definition of an exempt executive, administrative, or professional employee  
22 because:

- 23 (a) They did not work as executives or administrators; and,
- 24 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
- 25 members of the CALIFORNIA LABOR SUB-CLASS because they did not meet
- 26 all the applicable requirements to work under the professional exemption for the
- 27 reasons set forth above in this Complaint.

28 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF, and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, work more than eight (8) hours  
2 in a workday and/or more than forty (40) hours in a workweek.

3 76. DEFENDANT fails to pay PLAINTIFF, and the other members of the  
4 CALIFORNIA LABOR SUB-CLASS, overtime compensation for the time they worked in  
5 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and  
6 1198, even though PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS, are required to work, and do in fact work, overtime.

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

13 78. DEFENDANT knew or should have known that PLAINTIFF, and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS, are misclassified as exempt and  
15 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, not to pay  
16 them for their overtime labor as a matter of corporate policy, practice and procedure.

17 79. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR  
18 SUB-CLASS, request recovery of overtime compensation according to proof, interest, costs,  
19 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
20 by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation is determined  
21 to be owed to members of the CALIFORNIA LABOR SUB-CLASS who have terminated their  
22 employment, DEFENDANT's conduct also violates Labor Code § 201 and/or 202, and  
23 therefore these individuals are also to be entitled to waiting time penalties under Cal. Lab. Code  
24 § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-  
25 CLASS Members. Further, PLAINTIFF, and the other members of the CALIFORNIA LABOR  
26 SUB-CLASS, are entitled to seek and recover statutory costs.

27 80. In performing the acts and practices herein alleged in violation of labor laws and  
28 refusing to provide the requisite overtime compensation, DEFENDANT acted and continues

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

7  
8 **THIRD CAUSE OF ACTION**

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

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

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

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

16 82. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
17 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
18 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
19 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR  
20 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
21 duties for the legally required off-duty meal periods. As a result of their rigorous work  
22 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
23 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
24 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
25 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced  
26 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF  
27 and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in  
28 which these employees were required by DEFENDANT to work ten (10) hours of work. As a

1 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore  
2 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's  
3 corporate policy and practice.

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

21 86. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from  
22 time to time required to work in excess of four (4) hours without being provided ten (10) minute  
23 rest periods. Further, these employees from time to time were denied their first rest periods of  
24 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and  
25 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and  
26 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some  
27 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-  
28 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of

1 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
2 Members were periodically denied their proper rest periods by DEFENDANT and  
3 DEFENDANT's managers.

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

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

13 **FIFTH CAUSE OF ACTION**

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

15 **[Cal. Lab. Code § 226]**

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

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

21 90. Cal. Labor Code § 226 provides that an employer must furnish employees with  
22 an "accurate itemized" statement in writing showing:

23 (1) gross wages earned,

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

28 (3) the number of piecerate units earned and any applicable piece rate if the employee

1 is paid on a piece-rate basis,

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

4 (5) net wages earned,

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

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

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

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

13 91. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her  
14 employees with an accurate itemized wage statement in writing showing, among other things,  
15 gross wages earned and all applicable hourly rates in effect during the pay period and the  
16 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT  
17 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct  
18 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to  
19 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California  
20 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and  
21 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which  
22 violated Cal. Lab. Code § 226.

23 92. DEFENDANT knowingly and intentionally failed to comply with Labor Code §  
24 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR  
25 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the  
26 true time worked and the amount of employment taxes which were not properly paid to state and  
27 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and  
28 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated

1 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for  
2 each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according  
3 to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each  
4 respective member of the CALIFORNIA LABOR SUB-CLASS herein).

5  
6 **SIXTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

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

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

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

15 An employer shall indemnify his or her employee for all necessary expenditures  
16 or losses incurred by the employee in direct consequence of the discharge of his  
17 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.

18 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
19 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
21 benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
22 CLASS members for expenses which include, but are not limited to, costs related to using their  
23 personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's  
24 policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA LABOR  
25 SUB-CLASS members for expenses resulting from using their personal cellular phones for  
26 DEFENDANT within the course and scope of their employment for DEFENDANT. These  
27 expenses are necessary to complete their principal job duties. These expenses are necessary to  
28 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to  
assert any waiver of this expectation. Although these expenses are necessary expenses incurred

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

5 96. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred  
6 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
7 duties for DEFENDANT, or their obedience to the directions of DEFENDANT.

8 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

24 99. PLAINTIFF, and such persons that may be added from time to time who satisfy  
25 the requirements and exhaust the administrative procedures under the Private Attorney General  
26 Act, brings this Representative Action on behalf of the State of California with respect to herself  
27 and all individuals who worked for DEFENDANT in California as Qualified Intellectual  
28 Disability Professionals and were classified as exempt from overtime wages (the

1 "AGGRIEVED EMPLOYEES") during the time period of July 31, 2019 until a date as  
2 determined by the Court (the "PAGA PERIOD").

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

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

22 102. All of the conduct and violations alleged herein occurred during the  
23 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not  
24 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations  
25 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*  
26 2018 AJDAR 12157 (Certified for Publication 12/19/18).

---

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

- 5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
6 CLASS as a Class Action pursuant to California Code of Civil Procedure § 382;  
7 B) An order requiring DEFENDANT to correctly calculate and pay all overtime  
8 wages and all sums unlawfully withheld from compensation due to PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS;  
10 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
11 for restitution of the sums incidental to DEFENDANT's violations due to the  
12 PLAINTIFF and to the other members of the CALIFORNIA CLASS according  
13 to proof; and,  
14 D) An order temporarily, preliminarily, and permanently enjoining and restraining  
15 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

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

- 17 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
18 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action  
19 pursuant to California Code of Civil Procedure § 382;  
20 B) Compensatory damages, according to proof at trial, for overtime compensation  
21 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
22 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD  
23 plus interest thereon at the statutory rate;  
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
25 in which a violation occurs and one hundred dollars (\$100) per each member of  
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
28 an award of costs for violation of Cal. Lab. Code § 226;

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

- D) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order; and,
  - E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.
4. On all claims:
- A) An award of interest, including prejudgment interest at the legal rate;
  - B) Such other and further relief as the Court deems just and equitable; and,
  - C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

Dated: March 5, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff

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: March 5, 2021      BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff