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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

CHRISTINE ROSE, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

IMPACT GROUP, LLC, a Limited
Liability Company; and Does 1 through
50, Inclusive,

Defendants.

Case No. 30-2020-01166291-CU-OE-CXC

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).

Assigned for All Purposes
Judge William Claster

cx-104

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Impact Group, LLC (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, 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 an individual to bring an action on
15 behalf of herself 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 Impact Group, LLC (“DEFENDANT”) is a limited liability corporation
24 and at all relevant times mentioned herein conducted and continues to conduct substantial and
25 regular business in the state of California.

26 5. DEFENDANT wholesales and distributes food products. The Company provides
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1 general line of groceries.

2 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from June of 2018 to February 7,
4 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
5 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

11 THE CONDUCT

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13 11. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
14 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
15 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
16 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
17 meaning the time during which an employee was subject to the control of an employer,
18 including all the time the employee was permitted or suffered to permit this work.
19 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
20 without paying them for all the time they were under DEFENDANT's control. As a result of
21 their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
22 time to time not fully relieved of duty by DEFENDANT for their meal periods and would clock
23 out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction
24 during what should have been their off-duty meal period. Additionally, from time to time
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to respond to
26 DEFENDANT while off the clock via their cell phones for work related requests and
27 scheduling. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
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1 minimum wages and overtime wage compensation by working without their time being
2 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
3 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
4 worked, is evidenced by DEFENDANT's business records.

5 12. State law provides that employees must be paid overtime at one-and-one-half
6 times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
7 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

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

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

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

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

10 17. 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 wages earned. Aside from the violations listed above, DEFENDANT failed to issue to
16 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
17 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
18 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

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

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

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JURISDICTION AND VENUE

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

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

26. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to herself and all individuals who are or previously were employed by
3 DEFENDANT in California and who were classified as non exempt employees
4 (“AGGRIEVED EMPLOYEES”) during the time period of April 15, 2019 until a date as
5 determined by the Court (the "PAGA PERIOD").

6 27. On April 15, 2020, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
10 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
11 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
12 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
13 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 28. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
16 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
17 properly record and provide legally required meal and rest periods, (c) failed to pay
18 minimum wages, (d) failed to pay overtime wages, (e) failed to pay wages when due, and (f)
19 failed to reimburse employees for required expenses, all in violation of the applicable Labor
20 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
21 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
22 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
23 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery
24 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of
25 2004 as the representative of the State of California for the illegal conduct perpetrated on

26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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3 **PRAYER FOR RELIEF**

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

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

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

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

12 Dated: October 19, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
13 LLP

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16 By: /s/ Norman Blumenthal
17 Norman B. Blumenthal
18 Attorneys for Plaintiff
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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

April 15, 2020
CA2080

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Impact Group, LLC
Certified Mail #70142120000378196854
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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 Impact Group, LLC in California and classified as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiff Christine Rose (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Impact Group, LLC (“Defendant”). Plaintiff was employed by Defendant in California from June of 2018 to February 7, 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, Defendants failed to advise Plaintiff and the other Aggrieved Employees of their right to take

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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

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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 ORANGE**

10 CHRISTINE ROSE, an individual, on behalf
11 of herself, and on behalf of all persons
similarly situated,

12 Plaintiff,

13 vs.

14 IMPACT GROUP, LLC, a Limited
15 Liability Company; and Does 1 through 50,
Inclusive,

16 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;

3. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§ 510,
et seq.;

4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;

7. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§§ 201, 202 AND 203; and,

8. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Impact Group, LLC (“DEFENDANT”) is a limited liability corporation
7 and at all relevant times mentioned herein conducted and continues to conduct substantial and
8 regular business in the state of California.

9 2. DEFENDANT wholesales and distributes food products. The Company provides
10 general line of groceries.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from June of 2018 to February 7,
13 of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
14 a non-exempt employee paid in whole or in part on an hourly basis and received additional
15 compensation from DEFENDANT in the form of non-discretionary incentive wages.

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

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

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

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

23 24 THE CONDUCT

25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
27 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
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1 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
2 time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock
5 without paying them for all the time they were under DEFENDANT's control. As a result of their
6 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time
7 to time not fully relieved of duty by DEFENDANT for their meal periods and would clock out of
8 DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction during
9 what should have been their off-duty meal period. Additionally, from time to time PLAINTIFF
10 and other CALIFORNIA CLASS Members were required to respond to DEFENDANT while off
11 the clock via their cell phones for work related requests and scheduling. As a result, PLAINTIFF
12 and other CALIFORNIA CLASS Members forfeited minimum wages and overtime wage
13 compensation by working without their time being correctly recorded and without compensation
14 at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
15 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business
16 records.

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

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

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

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

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

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

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

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

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

9 18. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to her
10 in the form of two components. One component of PLAINTIFF’s compensation was a base
11 hourly wage. The second component of PLAINTIFF’s compensation was non-discretionary
12 incentive wages. DEFENDANT paid the incentive wages, so long as PLAINTIFF met certain
13 predefined performance requirements. PLAINTIFF met DEFENDANT’s predefined eligibility
14 performance requirements in various pay periods throughout her employment with DEFENDANT
15 and DEFENDANT paid PLAINTIFF the incentive wages. During these pay periods in which
16 PLAINTIFF was paid the non-discretionary incentive wages by DEFENDANT, PLAINTIFF also
17 worked overtime for DEFENDANT, but DEFENDANT never included the incentive compensation
18 in PLAINTIFF’s regular rate of pay for the purposes of calculating what should have been
19 PLAINTIFF’s accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked
20 throughout her employment with DEFENDANT. The incentive compensation paid by
21 DEFENDANT constituted wages within the meaning of the California Labor Code and thereby
22 should have been part of PLAINTIFF’s “regular rate of pay.” PLAINTIFF was also from time to
23 time unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal
24 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
25 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
26 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which she
27 was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited
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1 meal and rest breaks without additional compensation and in accordance with DEFENDANT's
2 strict corporate policy and practice. DEFENDANT also provided PLAINTIFF with a pay stub that
3 failed to comply with all the requirements set forth in Cal. Lab. Code § 226(a). To date,
4 DEFENDANT has not fully paid PLAINTIFF the wages still owed to her or any penalty wages
5 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
6 does not exceed the sum or value of \$75,000.

7 8 **JURISDICTION AND VENUE**

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

13 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked and resided in this County for
15 DEFENDANT, and DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against members of the
18 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

19 20 **THE CALIFORNIA CLASS**

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

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

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

16 24. DEFENDANT, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
18 requirements, and the applicable provisions of California law, intentionally, knowingly, and
19 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate and record
20 minimum wage and overtime compensation for overtime worked by PLAINTIFF and the other
21 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
22 work, required employees to perform this work and permitted or suffered to permit this work.

23 25. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
24 CLASS Member is paid the applicable rate for all overtime worked and to accurately calculate
25 the “regular rate of pay” by including the incentive compensation that PLAINTIFF and members
26 of the CALIFORNIA CLASS were awarded by DEFENDANT. DEFENDANT, however, failed to
27 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
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1 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
2 overtime rate for all overtime worked, so as to satisfy their burden. This common business
3 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
4 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code
5 §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

6 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
7 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
8 employee for all overtime worked at the applicable rate, as required by California Labor Code §§
9 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the overtime
10 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to include
11 all earnings in the overtime compensation calculation as required by California Labor Code §§
12 510, *et seq.*

13 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
14 Members is impracticable.

15 28. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
18 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all minimum
20 and overtime wages due the CALIFORNIA CLASS for all time worked, and
21 failed to accurately record the applicable rates of all overtime worked by
22 the CALIFORNIA CLASS;
- 23 (b) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
25 unlawfully, unfairly, and/or deceptively having in place a company policy,
26 practice and procedure that failed to correctly calculate overtime
27 compensation due to PLAINTIFF and the members of the CALIFORNIA
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1 CLASS;

- 2 (c) Committing an act of unfair competition in violation of the California
3 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
4 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the
5 CALIFORNIA CLASS members;
- 6 (d) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*,
9 by failing to pay the correct federal overtime wages to the PLAINTIFF and
10 the members of the CALIFORNIA CLASS as legally required by the FLSA,
11 and retaining the unpaid federal overtime to the benefit of DEFENDANT;
- 12 (e) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
14 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
15 CALIFORNIA CLASS members with necessary expenses incurred in the
16 discharge of their job duties.

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

- 19 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
20 the joinder of all such persons is impracticable and the disposition of their
21 claims as a class will benefit the parties and the Court;
- 22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
23 that are raised in this Complaint are common to the CALIFORNIA CLASS
24 will apply uniformly to every member of the CALIFORNIA CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims of
26 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
27 members of the CALIFORNIA CLASS, was subjected to the uniform
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1 employment practices of DEFENDANT and was a non-exempt employee
2 paid on an hourly basis and paid additional non-discretionary incentive
3 wages who was subjected to the DEFENDANT's practice and policy which
4 failed to pay the correct rate of overtime wages due to the CALIFORNIA
5 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
6 underpaid overtime compensation to the CALIFORNIA CLASS.
7 PLAINTIFF sustained economic injury as a result of DEFENDANT's
8 employment practices. PLAINTIFF and the members of the CALIFORNIA
9 CLASS were and are similarly or identically harmed by the same unlawful,
10 deceptive, unfair and pervasive pattern of misconduct engaged in by
11 DEFENDANT; and,

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

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

21 (a) Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of
23 separate actions by individual members of the CALIFORNIA CLASS will
24 create the risk of:

25 1) Inconsistent or varying adjudications with respect to individual
26 members of the CALIFORNIA CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
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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. Including the correct overtime rate, for all worked by the 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

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

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

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

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

18 3) In the context of wage litigation because a substantial number of
19 individual CALIFORNIA CLASS Members will avoid asserting their
20 legal rights out of fear of retaliation by DEFENDANT, which may
21 adversely affect an individual's job with DEFENDANT or with a
22 subsequent employer, the Class Action is the only means to assert
23 their claims through a representative; and,

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

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

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

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

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

15
16 **THE CALIFORNIA LABOR SUB-CLASS**

17 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
18 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
19 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
20 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
21 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
22 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
23 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

24 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime
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1 compensation for the overtime worked by PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work,
3 required employees to perform this work and permitted or suffered to permit this overtime work.
4 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
5 overtime wages at the correct amount to which these employees are entitled in order to unfairly
6 cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll
7 claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA
8 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

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

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 overtime compensation to members of the CALIFORNIA LABOR SUB-
20 CLASS in violation of the California Labor Code and California regulations
21 and the applicable California Wage Order;
- 22 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
23 entitled to overtime compensation for overtime worked under the overtime
24 pay requirements of California law;
- 25 (c) Whether DEFENDANT failed to accurately record the applicable overtime
26 rates for all overtime worked PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS;

- 1 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with legally required
3 uninterrupted thirty (30) minute meal breaks and rest periods;
- 4 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
6 wage statements;
- 7 (f) Whether DEFENDANT has engaged in unfair competition by the
8 above-listed conduct;
- 9 (g) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUB-CLASS; and,
- 11 (h) Whether DEFENDANT's conduct was willful.

12 38. DEFENDANT, as a matter of company policy, practice and procedure, failed to
13 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS
14 Members and failed to provide accurate records of the applicable overtime rates for the overtime
15 worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including
16 PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT
17 according to company procedures as alleged herein above. This business practice was applied to
18 each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety
19 of this conduct can be adjudicated on a class-wide basis.

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

- 22 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
23 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
24 the correct overtime pay for which DEFENDANT is liable pursuant to Cal.
25 Lab. Code § 1194 & § 1198;
- 26 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
27 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
28

1 SUB-CLASS the correct minimum wage pay for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

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

7 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
9 itemized statement in writing showing all accurate and applicable overtime
10 rates in effect during the pay period and the corresponding amount of time
11 worked at each overtime rate by the employee;

12 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
13 an employee is discharged or quits from employment, the employer must
14 pay the employee all wages due without abatement, by failing to tender full
15 payment and/or restitution of wages owed or in the manner required by
16 California law to the members of the CALIFORNIA LABOR SUB-CLASS
17 who have terminated their employment; and,

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

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

23 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
25 Members is impracticable and the disposition of their claims as a class will
26 benefit the parties and the Court;

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28

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

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

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

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

26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28

1 separate actions by individual members of the CALIFORNIA LABOR SUB-
2 CLASS will create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS which would
5 establish incompatible standards of conduct for the parties opposing
6 the CALIFORNIA LABOR SUB-CLASS; or,

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

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

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

26 1) The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of
28

1 separate actions in that the substantial expense of individual actions
2 will be avoided to recover the relatively small amount of economic
3 losses sustained by the individual CALIFORNIA LABOR SUB-
4 CLASS Members when compared to the substantial expense and
5 burden of individual prosecution of this litigation;

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

8 A. Inconsistent or varying adjudications with respect to
9 individual members of the CALIFORNIA LABOR SUB-
10 CLASS, which would establish incompatible standards of
11 conduct for the DEFENDANT; and/or,

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

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

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

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

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

1 relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS
2 as a whole;

3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
6 Members classified as non-exempt employees during the CALIFORNIA
7 LABOR SUB-CLASS PERIOD; and,

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

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

20 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
21 § 17021.

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

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

1 to prevent the use or employment by any person of any practice which constitutes
2 unfair competition, as defined in this chapter, or as may be necessary to restore to
3 any person in interest any money or property, real or personal, which may have
4 been acquired by means of such unfair competition.

5 Cal. Bus. & Prof. Code § 17203.

6 46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
7 in a business practice which violates California law, including but not limited to, the applicable
8 Wage Order(s), the California Code of Regulations and the California Labor Code including
9 Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, Cal. Code Regs., tit. 8,
10 § 11040. Subdivision 5(B), and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*,
11 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
12 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
13 unfair competition, including restitution of wages wrongfully withheld.

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

19 48. By the conduct alleged herein, DEFENDANT's practices were deceptive and
20 fraudulent in that DEFENDANT failed to pay PLAINTIFF, and other members of the
21 CALIFORNIA CLASS, wages due for overtime worked, reporting time wages due, failed to
22 accurately to record the applicable rate of all overtime worked, and failed to provide the required
23 amount of overtime compensation due to a miscalculation of the overtime rate that cannot be
24 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
25 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
26 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
27 restitution of wages wrongfully withheld.

28 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair

1 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
2 members of the CALIFORNIA CLASS to be underpaid during their employment with
3 DEFENDANT.

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

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

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

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

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

26 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
2 CLASS have been deprived, by means of the above described unlawful and unfair business
3 practices, including earned but unpaid wages for all overtime worked.

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

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

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

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

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

20 **and Against All Defendants)**

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

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

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

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

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

8 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
10 time they work, including time spent engaging in work tasks while off the clock. To the extent
11 that these off-the-clock job tasks do not qualify for overtime premium payment, DEFENDANT
12 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
13 §§ 1194, 1197, and 1197.1. As set forth herein, DEFENDANT's policy and practice was to
14 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

5 68. 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-CLASS
7 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
9 presently unknown to them and which will be ascertained according to proof at trial.

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
26 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
27 the California Labor Code and/or other applicable statutes. To the extent minimum wage
28

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

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

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

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

13 **Defendants)**

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

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

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

26 75. Cal. Lab. Code § 510 further provides that employees in California shall not be
27 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek

1 unless they receive additional compensation beyond their regular wages in amounts specified by
2 law.

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

7 77. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
9 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
10 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny
11 timely payment of wages due for the overtime worked by PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay these employees
13 the correct applicable overtime wages for all overtime worked.

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

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

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

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

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

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

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

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

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

27 91. As a proximate result of the aforementioned violations, PLAINTIFF and
28

1 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
2 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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4 **FIFTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

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

8 **Defendants)**

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

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

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

1 statement,

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

9 101. Cal. Lab. Code § 200 provides that:

10 As used in this article:

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

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

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

19 103. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

105. Cal. Lab. Code § 203 provides:

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

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

107. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time 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.

EIGHTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

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

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

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

110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using

1 their personal cell phones on behalf of and for the benefit of DEFENDANT. Specifically,
2 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
3 their personal cell phones in order to perform work related job tasks. DEFENDANT's policy,
4 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
5 CLASS members for expenses resulting from using their personal cell phones for DEFENDANT
6 within the course and scope of their employment for DEFENDANT. These expenses were
7 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
8 conduct to assert any waiver of this expectation. Although these expenses were necessary
9 expenses 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.

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

17
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 CALIFORNIA CLASS:
- 22 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 24 B) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 26 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
27 from compensation due to PLAINTIFF and the other members of the
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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 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) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

D) 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;

E) 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 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.;

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

G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and

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3. On all claims:
- A) An award of interest, including prejudgment interest at the legal rate;
 - B) Such other and further relief as the Court deems just and equitable; and,
 - C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 226, § 1194 and/or § 2802.

Dated: March 28, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: March 28, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff