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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

JOSHUA POINTS and JESSE
HERNANDEZ, on behalf of the State of
California, as private attorney generals,

Plaintiffs,

vs.

C&J WELL SERVICES, INC., a
Corporation; BASIC ENERGY SERVICES
LP, A Limited Partnership; and Does 1
through 50, Inclusive;

Defendants.

Case No. BCV-20-102487

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiffs Joshua Points and Jesse Hernandez (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as private attorney generals
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFFS bring this action against Defendants C&J WELL SERVICES, INC.
9 and BASIC ENERGY SERVICES LP (referred to as “DEFENDANT”) seeking only to recover
10 PAGA civil penalties for themselves, and on behalf of all current and former aggrieved
11 employees that worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything**
12 **other than penalties as permitted by California Labor Code § 2699.** To the extent that
13 statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying
14 general and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

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

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

24 25 THE PARTIES

26 4. Defendant C&J Well Services, Inc. is a Corporation that at all relevant times
27 mentioned herein conducted and continues to conduct substantial and regular business
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1 throughout California.

2 5. Defendant Basic Energy Services LP is a limited partnership that at all relevant
3 times mentioned herein conducted and continues to conduct substantial and regular business
4 throughout California.

5 6. Defendants C&J Well Services, Inc. and Basic Energy Services LP were the joint
6 employers of PLAINTIFFS as evidenced by paycheck and/or by the company PLAINTIFFS
7 performed work for respectively, and are therefore jointly responsible as employers for the
8 conduct alleged herein, and are therefore collectively referred to herein as DEFENDANT.
9 PLAINTIFFS allege there exists a unity of interest and ownership between Defendants such that
10 any individuality and separateness between the entities has ceased and both Defendants are
11 referred to herein as DEFENDANT.

12 7. Plaintiff Points was employed by DEFENDANT in California as a non-exempt
13 employee entitled to overtime pay and meal and rest periods from January of 2019 to June of
14 2020. Plaintiff Points was at all times relevant mentioned herein classified by DEFENDANT
15 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

17 8. Plaintiff Hernandez was employed by DEFENDANT in California as a non-
18 exempt employee entitled to overtime pay and meal and rest periods from September of 2018
19 to April of 2020. Plaintiff Hernandez was at all times relevant mentioned herein classified by
20 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
21 received additional compensation from DEFENDANT in the form of non-discretionary
22 incentive wages.

23 9. PLAINTIFFS, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, bring this Representative Action on behalf of the State of California with respect to
26 themselves and all individuals who are or previously were employed by Defendants C&J Well
27 Services, Inc. and/or Basic Energy Services LP in California and who were classified as non
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1 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 31, 2019
2 until a date as determined by the Court (the "PAGA PERIOD").

3 10. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
4 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
5 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
6 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
7 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
8 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
9 Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved
10 employees within the meaning of Labor Code § 2699, *et seq.*

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

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

1 **THE CONDUCT**

2 13. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
3 accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for their
4 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
5 calculate minimum and overtime wages for time worked by PLAINTIFFS and other
6 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
7 compensation. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited
8 wages due them for working without compensation at the correct minimum wage and overtime
9 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
10 correct compensation for all time worked in accordance with applicable law is evidenced by
11 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
12 purposefully avoid the payment of the correct compensation as required by California law which
13 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
14 complied with the law.

15 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control. Specifically, DEFENDANT required
23 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
24 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments.
25 Additionally, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required to perform
26 pre-shift work tasks in which DEFENDANT provided no pay for that included, but were not
27 limited to, fueling DEFENDANT's work trucks and getting their work vehicles ready with
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1 equipment at DEFENDANT's yard prior to driving out to the oil field where they primarily
2 performed their work for the day. As a result, PLAINTIFFS and other AGGRIEVED
3 EMPLOYEES forfeited minimum wage and overtime compensation by working without their
4 time being accurately recorded and without compensation at the applicable minimum wage and
5 overtime rates. To the extent that the time worked off the clock did not qualify for overtime
6 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-
7 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

8 15. State and federal law provides that employees must be paid overtime at one-and-
9 one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
11 elements of an employee's performance.

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

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

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

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

13 20. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
14 employees with an accurate itemized wage statement in writing showing, among other things,
15 gross wages earned and all applicable hourly rates in effect during the pay period and the
16 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
17 failed to provide to PLAINTIFFS and the AGGRIEVED EMPLOYEES wage statements that
18 identify the correct gross and net wages earned, the applicable number of hours worked and
19 rates of pay. Specifically, DEFENDANT violated Section 226 by failing to identify the correct
20 rates of pay and number of hours worked, including, but not limited to, for the "Worked Meal,"
21 "NBW Down," "Doubletime," "Overtime," "Travel Time B," and "NBW Rest," items of pay,
22 which are wage payments. Aside, from the violations listed above in this paragraph,
23 DEFENDANT failed to issue to PLAINTIFFS and other AGGRIEVED EMPLOYEES an
24 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

25 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence
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1 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
2 2802, employers are required to indemnify employees for all expenses incurred in the course
3 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
5 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
6 directions of the employer, even though unlawful, unless the employee, at the time of obeying
7 the directions, believed them to be unlawful."

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

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

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

6
7 **JURISDICTION AND VENUE**

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

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

15
16 **FIRST CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and Against All Defendants)**

20 27. PLAINTIFFS reallege and incorporate by this reference, as though fully set
21 forth herein, the prior paragraphs of this Complaint.

22 28. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
24 the state's labor law enforcement agencies. An action to recover civil penalties under
25 PAGA is fundamentally a law enforcement action designed to protect the public and not to
26 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
27 but to create a means of "deputizing" citizens as private attorneys general to enforce the
28 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the

1 public interest to allow aggrieved employees, acting as private attorneys general to recover
2 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 29. PLAINTIFFS, and such persons that may be added from time to time who
5 satisfy the requirements and exhaust the administrative procedures under the Private
6 Attorney General Act, bring this Representative Action on behalf of the State of California
7 with respect to themselves and all individuals who are or previously were employed by
8 Defendants C&J Well Services, Inc. and/or Basic Energy Services LP in California and who
9 were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time
10 period of July 31, 2019 until a date as determined by the Court (the "PAGA PERIOD").

11 30. On July 31, 2020, PLAINTIFFS gave written notice by electronic mail to the
12 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
15 herein. The statutory waiting period for PLAINTIFFS to add these allegations to the
16 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
17 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
18 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

19 31. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
21 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
22 properly record and provide legally required meal and rest periods, (c) failed to pay
23 minimum wages, (d) failed to pay overtime wages, (e) failed to pay wages when due, and (f)
24 failed to reimburse employees for required expenses, all in violation of the applicable Labor
25 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
26 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
27 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
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1 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery
2 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of
3 2004 as the representatives of the State of California for the illegal conduct perpetrated on
4 PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
8 severally, as follows:

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

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

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

15 Dated: October 22, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
16

17
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19 By: 

20 Norman B. Blumenthal
21 Attorneys for Plaintiffs
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

July 31, 2020
CA2166

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANTS

Labor and Workforce Development Agency
Online Filing

C&J Well Services, Inc.
Certified Mail # 70201290000153360854
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Basic Energy Services LP
Certified Mail # 70201290000153360861
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 Defendants C&J Well Services, Inc. and/or Basic Energy Services LP in California and classified as non-exempt employees during the time period of July 31, 2019 until a date as determined by the Court. Our offices represent Plaintiffs Joshua Points and Jesse Hernandez (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Defendants C&J Well Services, Inc. and Basic Energy Services LP (“Defendants”). Plaintiff Points was employed by Defendants in California from January of 2019 to June of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control. Plaintiff Hernandez was employed by Defendants in California from September of 2019 to April of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control. Defendants, however, unlawfully failed to record and pay Plaintiffs 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 Defendants required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendants violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendants required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendants 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 Plaintiffs 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.*, Defendants failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contends that Defendants failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiffs contend that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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. Defendants fail to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendants, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendants, 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. Plaintiffs therefore incorporate 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 Plaintiffs to proceed with the Complaint against Defendants 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 Plaintiffs, the Defendants 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 Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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6 Attorneys for Plaintiffs

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

9 **IN AND FOR THE COUNTY OF BAKERSFIELD**

10 JOSHUA POINTS and JESSE
11 HERNANDEZ, individuals, on behalf of
themselves and on behalf of all persons
12 similarly situated,

13 Plaintiffs,

14 vs.
C&J WELL SERVICES, INC., a
15 Corporation; BASIC ENERGY SERVICES
LP, A Limited Partnership; and Does 1
16 through 50, Inclusive;

17 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiffs Joshua Points and Jesse Hernandez (“PLAINTIFFS”), individuals, on behalf
2 of themselves and all other similarly situated current and former employees, allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant C&J Well Services, Inc. is a Corporation that at all relevant times
8 mentioned herein conducted and continues to conduct substantial and regular business
9 throughout California.

10 2. Defendant Basic Energy Services LP is a limited partnership that at all relevant
11 times mentioned herein conducted and continues to conduct substantial and regular business
12 throughout California.

13 3. Defendants C&J Well Services, Inc. and Basic Energy Services LP were the joint
14 employers of PLAINTIFFS as evidenced by paycheck and/or by the company PLAINTIFFS
15 performed work for respectively, and are therefore jointly responsible as employers for the
16 conduct alleged herein, and are therefore collectively referred to herein as DEFENDANT.
17 PLAINTIFFS allege there exists a unity of interest and ownership between Defendants such that
18 any individuality and separateness between the entities has ceased and both Defendants are
19 referred to herein as DEFENDANT.

20 4. Plaintiff Points was employed by DEFENDANT in California as a non-exempt
21 employee entitled to overtime pay and meal and rest periods from January of 2019 to June of
22 2020. Plaintiff Points was at all times relevant mentioned herein classified by DEFENDANT
23 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
24 compensation from DEFENDANT in the form of non-discretionary incentive wages.

25 5. Plaintiff Hernandez was employed by DEFENDANT in California as a non-
26 exempt employee entitled to overtime pay and meal and rest periods from September of 2018
27 to April of 2020. Plaintiff Hernandez was at all times relevant mentioned herein classified by
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1 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
2 received additional compensation from DEFENDANT in the form of non-discretionary
3 incentive wages.

4 6. PLAINTIFFS bring this Class Action on behalf of themselves and a California
5 class, defined as all individuals who are or previously were employed by C&J Well Services,
6 Inc. and/or Basic Energy Services LP in California and classified as non-exempt employees (the
7 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years
8 prior to the filing of this Complaint and ending on the date as determined by the Court (the
9 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
10 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

11 7. PLAINTIFFS bring this Class Action on behalf of themselves and a
12 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
13 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
14 practice which failed to lawfully compensate these employees for all their overtime worked.
15 DEFENDANT's policy and practice alleged herein is an unlawful, unfair and deceptive
16 business practice whereby DEFENDANT retained and continues to retain wages due
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
18 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
19 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
21 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

12 13 **THE CONDUCT**

14 10. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
15 to fail to accurately calculate and pay PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS for their minimum and overtime wages. DEFENDANT unlawfully and
17 unilaterally failed to accurately calculate minimum and overtime wages for time worked by
18 PLAINTIFFS and other members of the CALIFORNIA CLASS in order to avoid paying these
19 employees the correct compensation. As a result, PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS forfeited wages due them for working without compensation at the
21 correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay the
22 members of the CALIFORNIA CLASS the correct compensation for all time worked in
23 accordance with applicable law is evidenced by DEFENDANT's business records. This policy
24 and practice of DEFENDANT was intended to purposefully avoid the payment of the correct
25 compensation as required by California law which allowed DEFENDANT to illegally profit and
26 gain an unfair advantage over competitors who complied with the law.

27 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
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1 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
2 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
3 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
4 all time worked, meaning the time during which an employee was subject to the control of an
5 employer, including all the time the employee was permitted or suffered to permit this work.
6 DEFENDANT required these employees to work off the clock without paying them for all the
7 time they were under DEFENDANT's control. Specifically, DEFENDANT required
8 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
9 duty meal break. PLAINTIFFS was from time to time interrupted by work assignments.
10 Additionally, PLAINTIFFS and other CALIFORNIA CLASS Members were required to
11 perform pre-shift work tasks in which DEFENDANT provided no pay for that included, but
12 were not limited to, fueling DEFENDANT's work trucks and getting their work vehicles ready
13 with equipment at DEFENDANT's yard prior to driving out to the oil field where they primarily
14 performed their work for the day. As a result, PLAINTIFFS and other CALIFORNIA CLASS
15 Members forfeited minimum wage and overtime compensation by working without their time
16 being accurately recorded and without compensation at the applicable minimum wage and
17 overtime rates. To the extent that the time worked off the clock did not qualify for overtime
18 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-
19 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

20 12. State and federal law provides that employees must be paid overtime at one-and-
21 one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS
22 Members were compensated at an hourly rate plus incentive pay that was tied to specific
23 elements of an employee's performance.

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

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

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

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

25 17. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
26 employees with an accurate itemized wage statement in writing showing, among other things,
27 gross wages earned and all applicable hourly rates in effect during the pay period and the
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1 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
2 failed to provide to PLAINTIFFS and the CALIFORNIA CLASS wage statements that identify
3 the correct gross and net wages earned, the applicable number of hours worked and rates of pay.
4 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
5 and number of hours worked, including, but not limited to, for the "Worked Meal," "NBW
6 Down," "Doubletime," "Overtime," "Travel Time B," and "NBW Rest," items of pay, which
7 are wage payments. Aside, from the violations listed above in this paragraph, DEFENDANT
8 failed to issue to PLAINTIFFS and other CALIFORNIA CLASS members an itemized wage
9 statement that lists all the requirements under California Labor Code 226 *et seq.*

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

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

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

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

14 15 **JURISDICTION AND VENUE**

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

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

25 26 **THE CALIFORNIA CLASS**

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

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

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

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

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

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

23 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
26 law by:

27 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
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1 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
2 place company policies, practices and procedures that failed to pay all
3 minimum and overtime wages due the CALIFORNIA CLASS for all time
4 worked, and failed to accurately record the applicable rates of all overtime
5 worked by the CALIFORNIA CLASS;

6 (b) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 unlawfully, unfairly, and/or deceptively having in place a company policy,
9 practice and procedure that failed to correctly calculate overtime
10 compensation due to PLAINTIFFS and the members of the
11 CALIFORNIA CLASS;

12 (c) 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 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
15 *seq.*, by failing to pay the correct federal overtime wages to the
16 PLAINTIFFS and the members of the CALIFORNIA CLASS as legally
17 required by the FLSA, and retaining the unpaid federal overtime to the
18 benefit of DEFENDANT.;

19 (d) Committing an act of unfair competition in violation of the California
20 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
21 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and
22 the CALIFORNIA CLASS members; and,

23 (e) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
25 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
26 the CALIFORNIA CLASS members with necessary expenses incurred in
27 the discharge of their job duties.
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1 32. This Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because the DEFENDANT's employment practices are
19 applied with respect to the CALIFORNIA CLASS;

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

26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before the
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1 Court;

2 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
3 able to obtain effective and economic legal redress unless the action is
4 maintained as a Class Action;

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

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

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

16 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
17 the business records of DEFENDANT; and,

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

22 35. DEFENDANT maintains records from which the Court can ascertain and identify
23 by job title each of DEFENDANT's employees who as have been intentionally subjected to
24 DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend the
25 Complaint to include any additional job titles of similarly situated employees when they have
26 been identified.

THE CALIFORNIA LABOR SUB-CLASS

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

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

38. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been intentionally subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all

1 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

- 8 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
9 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
10 CLASS the correct overtime pay for which DEFENDANT is liable
11 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 12 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
13 accurately pay PLAINTIFFS and the members of the CALIFORNIA
14 LABOR SUB-CLASS the correct minimum wage pay for which
15 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 16 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR
18 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
19 minute meal breaks and the legally required rest breaks; and,
- 20 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
21 the members of the CALIFORNIA LABOR SUB-CLASS with an
22 accurate itemized statement in writing showing all accurate and applicable
23 overtime rates in effect during the pay period and the corresponding
24 amount of time worked at each overtime rate by the employee;
- 25 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
26 and the CALIFORNIA LABOR SUB-CLASS members with necessary
27 expenses incurred in the discharge of their job duties; and,

1 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
2 when an employee is discharged or quits from employment, the employer
3 must pay the employee all wages due without abatement, by failing to
4 tender full payment and/or restitution of wages owed or in the manner
5 required by California law to the members of the CALIFORNIA LABOR
6 SUB-CLASS who have terminated their employment.

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

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

13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 LABOR SUB-CLASS and will apply to every member of the
16 CALIFORNIA LABOR SUB-CLASS;

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

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

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

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
2 DEFENDANT failed to pay all wages due. Including the correct overtime
3 rate, for all overtime worked by the members of the CALIFORNIA
4 LABOR SUB-CLASS as required by law;

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

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

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

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

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

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

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

45. 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 LABOR
SUB-CLASS predominate over any question affecting only individual
CALIFORNIA LABOR SUB-CLASS Members;

(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
LABOR SUB-CLASS because in the context of employment litigation a
substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so
numerous that it is impractical to bring all members of the CALIFORNIA

LABOR SUB-CLASS before the Court;

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

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 46. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

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

18 Cal. Bus. & Prof. Code § 17203.

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

27 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
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1 unfair in that these practices violated public policy, were immoral, unethical, oppressive,
2 unscrupulous or substantially injurious to employees, and were without valid justification or
3 utility for which this Court should issue equitable and injunctive relief pursuant to Section
4 17203 of the California Business & Professions Code, including restitution of wages wrongfully
5 withheld.

6 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
7 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFFS, and other
8 members of the CALIFORNIA CLASS, minimum and overtime wages for all time worked,
9 failed to accurately to record the applicable rate of all overtime worked, failed to pay reporting
10 time wages owed, failed to reimburse necessary business expenses incurred, and failed to
11 provide the required amount of overtime compensation due to a miscalculation of the overtime
12 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
13 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
14 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
15 including restitution of wages wrongfully withheld.

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

20 53. By the conduct alleged herein, DEFENDANT's practices were also unfair and
21 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
22 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

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

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

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

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

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

24 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
27 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
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1 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
2 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
3 engage in these unlawful and unfair business practices.

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

4 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
7 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFFS
8 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
9 correct amount of overtime worked and correct applicable overtime rate for the amount of
10 overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
11 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
12 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, and
13 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
14 all overtime worked.

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

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

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

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

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

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

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

27 74. DEFENDANT knew or should have known that PLAINTIFFS and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
5 of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

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

9 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
11 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
12 to accurately calculate and pay minimum and reporting time wages to PLAINTIFFS and
13 CALIFORNIA CLASS Members.

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

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

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

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

26 83. DEFENDANT's unlawful wage and hour practices manifested, without
27 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
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1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

12 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
13 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
14 Members to work without paying them for all the time they were under DEFENDANT's
15 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
17 they were entitled to, constituting a failure to pay all earned wages.

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

24 88. DEFENDANT knew or should have known that PLAINTIFFS and the other
25 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
26 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
27 to not pay employees for their labor as a matter of company policy, practice and procedure, and
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1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
2 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

3 89. 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 compensation, DEFENDANT acted and
6 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with a conscious 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
10 company profits at the expense of these employees.

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

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

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

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

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

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9 **FIFTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

98. As a proximate result of the aforementioned violations, PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

99. PLAINTIFFS, 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.

100. 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 piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

1 (4) all deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item,
3 (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid,
5 (7) the name of the employee and his or her social security number, except that by
6 January 1, 2008, only the last four digits of his or her social security number or an
7 employee identification number other than a social security number may be shown on
8 the itemized statement,
9 (8) the name and address of the legal entity that is the employer, and
10 (9) all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee.

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

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

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10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

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

19 An employer shall indemnify his or her employee for all necessary expenditures
20 or losses incurred by the employee in direct consequence of the discharge of his
21 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.

22 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
23 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
25 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
26 SUB-CLASS members for expenses which included, but were not limited to, costs related to
27 using their personal cellular phones on behalf of and for the benefit of DEFENDANT.

Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

106. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

108. Cal. Lab. Code § 200 provides that:

As used in this article:

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

(b) "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to
2 be paid for is performed personally by the person demanding payment.

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

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

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

16 111. There was no definite term in PLAINTIFFS’ or any CALIFORNIA LABOR
17 SUB-CLASS Members’ employment contract.

18 112. Cal. Lab. Code § 203 provides:

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

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

27 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFFS
demand 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 demand an accounting and payment of all wages due, plus interest and statutory
costs as allowed by law.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
17 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
18 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due PLAINTIFFS and the other members
21 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) Meal and rest period compensation pursuant to California Labor Code Section
25 226.7 and the applicable IWC Wage Order;
26 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
27 in which a violation occurs and one hundred dollars (\$100) per each member of
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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 amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;

F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

G) 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; and,

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(a), in accordance with Cal. Lab. Code § 210.

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: July 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____

Norman B. Blumenthal
Attorneys for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: July 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIKDE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFFS