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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By Brenda Ramirez, Deputy Clerk

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

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 XAVIER DREMEE, CHRISTINA
15 BONNIWELL, and ALEXIS MONROE,
16 individually, on behalf of themselves and on
17 behalf of all persons similarly situated,

18 Plaintiff,

19 vs.

20 AURORA-SAN DIEGO, LLC, a California
21 Limited Liability Company; SIGNATURE
22 HEALTHCARE SERVICES, LLC, a Limited
23 Liability Company; and DOES 1 through 50,
24 inclusive,

25 Defendants.

Case No. 37-2021-00007280-CU-OE-CTL

SECOND AMENDED CLASS ACTION

COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 9. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
 10. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
 11. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]
- DEMAND FOR A JURY TRIAL**

1 Plaintiffs XAVIAR DREMEE, CHRISTINA BONNIWELL, and ALEXIS MONROE
2 (“PLAINTIFFS”), individually, on behalf of themselves and all other similarly situated current
3 and former employees allege on information and belief, except for their own acts and
4 knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant Aurora - San Diego, LLC is a California limited liability company that
7 at all relevant times mentioned herein conducted and continues to conduct substantial business
8 in the state of California.

9 2. Defendant Signature Healthcare Services, LLC is a limited liability company that
10 at all relevant times mentioned herein conducted and continues to conduct substantial business
11 in the state of California.

12 3. Defendants Aurora - San Diego, LLC and Signature Healthcare Services, LLC
13 were the joint employers of PLAINTIFFS as evidenced by company documents and by the
14 company PLAINTIFFS performed work for respectively, and are therefore jointly responsible
15 as employers for the conduct alleged herein, and are therefore collectively referred to herein as
16 “DEFENDANT.”

17 4. DEFENDANT is an 101-bed, private, full service behavioral healthcare facility,
18 located in San Diego County. DEFENDANT provides a variety of in patient, day treatment and
19 outpatient services.

20 5. Plaintiff Xavier Dremee was employed by DEFENDANT in California from
21 December of 2019 to May 11, 2020 and was at all times classified by DEFENDANT as a non-
22 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
23 periods and payment of minimum and overtime wages due for all time worked.

24 6. Plaintiff Christina Bonniwell is employed by DEFENDANT in California since
25 May 2016 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
26 an hourly basis, and entitled to the legally required meal and rest periods and payment of
27 minimum and overtime wages due for all time worked.

28 7. Plaintiff Alexis Monroe was employed by DEFENDANT in California from

1 February of 2021 to May of 2021 and was at all times classified by DEFENDANT as a
2 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
3 periods and payment of minimum and overtime wages due for all time worked.

4 8. 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 Aurora - San Diego,
6 LLC in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at
7 any time during the period from July 30, 2019 to August 16, 2022 (the "CALIFORNIA CLASS
8 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
9 Members is under five million dollars (\$5,000,000.00).

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

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

1 caused the injuries and damages hereinafter alleged.

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

10 **THE CONDUCT**

11
12 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT required
16 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the
17 time they were under DEFENDANT's control. Specifically, DEFENDANT required
18 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
19 duty meal break and also required PLAINTIFFS and other CALIFORNIA CLASS Members
20 to work after they had already clocked out of DEFENDANT's timekeeping system at the end
21 of their work shifts. PLAINTIFFS were from time to time interrupted by work assignments
22 while clocked out for what should have been PLAINTIFFS' off-duty meal break. Further,
23 PLAINTIFFS and other members of the CALIFORNIA CLASS from time to time were not paid
24 wages for all time worked, including overtime wages, such that in the aggregate employees
25 were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding
26 time worked by its employees. DEFENDANT also underpaid sick pay wages to PLAINTIFFS
27 and other CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
28 pay. Specifically, PLAINTIFFS and other non-exempt employees regularly earn non-

1 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
2 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
3 to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.
4 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS
5 Members for all time worked, is evidenced by DEFENDANT's business records.

6 13. As a result of their rigorous work schedules, PLAINTIFFS and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
9 other CALIFORNIA CLASS Members were required from time to time to perform work as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
13 which these employees were required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
15 without additional compensation and in accordance with DEFENDANT's strict corporate policy
16 and practice.

17 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
18 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
19 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
20 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
21 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
22 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
24 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
25 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
26 Order requires employers to provide employees with off-duty rest periods, which the California
27 Supreme Court defined as time during which an employee is relieved from all work related
28 duties and free from employer control. In so doing, the Court held that the requirement under

1 California law that employers authorize and permit all employees to take rest period means that
2 employers must relieve employees of all duties and relinquish control over how employees
3 spend their time which includes control over the locations where employees may take their rest
4 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
5 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and
6 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
7 DEFENDANT's rule which stated PLAINTIFFS and other CALIFORNIA CLASS Members
8 could not leave the work premises during their rest period.

9 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
10 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
11 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
12 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
13 all time worked, meaning the time during which an employee was subject to the control of an
14 employer, including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT required these employees to work off the clock without paying them for all the
16 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
17 known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under
18 compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS
19 Members forfeited time worked by working without their time being accurately recorded and
20 without compensation at the applicable minimum wage and overtime wage rates. To the extent
21 that the time worked off the clock did not qualify for overtime premium payment,
22 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
23 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

24 16. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
26 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
27 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

1 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
3 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
4 directions of the employer, even though unlawful, unless the employee, at the time of obeying
5 the directions, believed them to be unlawful."

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

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

26 19. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
28 intentionally failed to compensate PLAINTIFFS and the other members of the CALIFORNIA

1 CLASS for missed meal and rest periods. This policy and practice of DEFENDANT is intended
2 to purposefully avoid the payment for all time worked as required by California law which
3 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law.

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

15 21. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
16 required off-duty meal and rest breaks to them as required by the applicable Wage Order and
17 Labor Code and failed to pay them all minimum and overtime wages due to them.
18 DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest
19 breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for their missed meal and
20 rest breaks. The nature of the work performed by the PLAINTIFFS did not prevent them from
21 being relieved of all of his duties for the legally required off-duty meal periods. As a result,
22 DEFENDANT’s failure to provide PLAINTIFFS with the legally required meal periods is
23 evidenced by DEFENDANT’s business records. To date, DEFENDANT has yet to pay
24 PLAINTIFFS all of his wages due to them and DEFENDANT has failed to pay any penalty
25 wages owed to them under California Labor Code Section 203. The amount in controversy for
26 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

27 22. In April of 2020, Plaintiff Dremee consulted with a Doctor regarding health issues
28 as he was immune compromised and at a high risk of contracting and having severe respiratory

1 problems. Furthermore, the continuous stress from work caused Plaintiff Dremee to feel afraid
2 of going into work, as he would have put himself at more risk of additional mental anguish.
3 Consequently, the work pressures and fear accumulated into severe mental distress with the
4 workplace and the adverse treatment Plaintiff Dremee had received from his supervisors. In or
5 around April of 2020, Plaintiff Dremee went out on leave for with a doctor's note due to his
6 underlying health condition amidst the COVID-19 pandemic - Plaintiff Dremee provided a
7 doctor's note to DEFENDANT regarding his medical leave. The doctor's note stated that
8 according to the CDC Guidelines, Plaintiff Dremee was considered high risk for COVID-19 and
9 hence it was recommended a 6 foot separation from co-workers and or patients. Plaintiff
10 Dremee's leave was for a month period. After notifying DEFENDANT of his medical
11 condition, DEFENDANT terminated Plaintiff Dremee's employment in or around May of 2020.
12 DEFENDANT claimed it could not follow the CDC Guidelines and accommodate Plaintiff
13 Dremee's medical condition. Prior to filing this action, Plaintiff Dremee exhausted his
14 administrative remedies by filing a timely administrative complaint with the Department of Fair
15 Employment and Housing ("DFEH") and received a DFEH right-to-sue letter on January 3,
16 2021.

17 **JURISDICTION AND VENUE**

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

23 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
25 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
26 in this County and/or conducts substantial business in this County, and (ii) committed the
27 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.
28

THE CALIFORNIA CLASS

25. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Aurora - San Diego, LLC in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period from July 30, 2019 to August 16, 2022 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

29. DEFENDANT violated the rights of the CALIFORNIA CLASS under California

1 law by:

- 2 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
3 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
4 deceptively having in place company policies, practices and procedures
5 that failed to record and pay PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS for all time worked, including minimum wages
7 owed and overtime wages owed for work performed by these employees;
- 8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFFS and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods;
11 and,
- 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 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
15 the CALIFORNIA CLASS members with necessary expenses incurred in
16 the discharge of their job duties.

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

- 19 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
20 that the joinder of all such persons is impracticable and the disposition of
21 their claims as a class will benefit the parties and the Court;
- 22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
23 that are raised in this Complaint are common to the CALIFORNIA
24 CLASS will apply to every member of the CALIFORNIA CLASS;
- 25 (c) The claims of the representative PLAINTIFFS are typical of the claims of
26 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
27 other members of the CALIFORNIA CLASS, were classified as non-
28 exempt employees paid on an hourly basis who were subjected to the

1 DEFENDANT's deceptive practice and policy which failed to provide the
2 legally required meal and rest periods to the CALIFORNIA CLASS and
3 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
4 CLASS. PLAINTIFFS sustained economic injury as a result of
5 DEFENDANT's employment practices. PLAINTIFFS and the members
6 of the CALIFORNIA CLASS were and are similarly or identically harmed
7 by the same unlawful, deceptive, and unfair misconduct engaged in by
8 DEFENDANT; and,

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

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

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

- 23 1) Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA CLASS which would establish
25 incompatible standards of conduct for the parties opposing the
26 CALIFORNIA CLASS; and/or,
27 2) Adjudication with respect to individual members of the
28 CALIFORNIA CLASS which would as a practical matter be

dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

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

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

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

1 prosecution of this litigation;

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

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

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

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

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

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

26 (a) The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual CALIFORNIA
28 CLASS Members because the DEFENDANT's employment practices are

1 applied with respect to the CALIFORNIA CLASS;

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

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA CLASS.

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

8 34. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
9 Eighth of Action on behalf of a CALIFORNIA CLASS pursuant to Cal. Code of Civ. Proc.
10 § 382. The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members
11 is under five million dollars (\$5,000,000.00).

12 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
13 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and
15 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
16 compensation for the time worked by PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS and reporting time wages owed to these employees, even though
18 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
19 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA
20 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
21 competition and unlawfully profit.

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

27 37. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
28 CLASS Members is impracticable.

1 38. Common questions of law and fact exist as to members of the CALIFORNIA
2 CLASS, including, but not limited, to the following:

- 3 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA CLASS for missed
5 meal and rest breaks in violation of the California Labor Code and
6 California regulations and the applicable California Wage Order;
7 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
8 members of the CALIFORNIA CLASS with accurate itemized wage
9 statements;
10 (c) Whether DEFENDANT has engaged in unfair competition by the
11 above-listed conduct;
12 (d) The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA CLASS; and,
14 (e) Whether DEFENDANT's conduct was willful.

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

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
18 PLAINTIFFS and the members of the CALIFORNIA CLASS all wages
19 due for overtime worked, for which DEFENDANT is liable pursuant to
20 Cal. Lab. Code § 1194;
21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay PLAINTIFFS and the members of the CALIFORNIA
23 CLASS the correct minimum wage pay for which DEFENDANT is liable
24 pursuant to Cal. Lab. Code §§ 1194 and 1197;
25 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
26 the members of the CALIFORNIA CLASS with an accurate itemized
27 statement in writing showing the corresponding correct amount of wages
28 earned by the employee;

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
3 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
4 and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the employer
7 must pay the employee all wages due without abatement, by failing to
8 tender full payment and/or restitution of wages owed or in the manner
9 required by California law to the members of the CALIFORNIA CLASS
10 who have terminated their employment; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
12 and the CALIFORNIA CLASS members with necessary expenses
13 incurred in the discharge of their job duties.

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

- 16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
17 that the joinder of all CALIFORNIA CLASS Members is impracticable
18 and the disposition of their claims as a class will benefit the parties and the
19 Court;
- 20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
21 that are raised in this Complaint are common to the CALIFORNIA
22 CLASS and will apply to every member of the CALIFORNIA CLASS;
- 23 (c) The claims of the representative PLAINTIFFS are typical of the claims of
24 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
25 other members of the CALIFORNIA CLASS, were non-exempt
26 employees paid on an hourly basis who were subjected to the
27 DEFENDANT's practice and policy which failed to pay the correct
28 amount of wages due to the CALIFORNIA CLASS. PLAINTIFFS

1 sustained economic injury as a result of DEFENDANT's employment
2 practices. PLAINTIFFS and the members of the CALIFORNIA CLASS
3 were and are similarly or identically harmed by the same unlawful,
4 deceptive, and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS which would establish
21 incompatible standards of conduct for the parties opposing the
22 CALIFORNIA CLASS; or,
23 2) Adjudication with respect to individual members of the
24 CALIFORNIA CLASS which would as a practical matter be
25 dispositive of interests of the other members not party to the
26 adjudication or substantially impair or impede their ability to
27 protect their interests.

- 28 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to

1 act on grounds generally applicable to the CALIFORNIA CLASS, making
2 appropriate class-wide relief with respect to the CALIFORNIA CLASS
3 as a whole in that DEFENDANT fails to pay all wages due. Including the
4 correct wages for all time worked by the members of the CALIFORNIA
5 CLASS as required by law;

6 (c) Common questions of law and fact predominate 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
28 to the adjudication or substantially impair or impede their

ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is

maintained as a Class Action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA 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 CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

43. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
2 Complaint.

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

5 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
6 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
7 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
8 competition as follows:

9 Any person who engages, has engaged, or proposes to engage in unfair
10 competition may be enjoined in any court of competent jurisdiction. The court
11 may make such orders or judgments, including the appointment of a receiver, as
12 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.

13 Cal. Bus. & Prof. Code § 17203.

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

22 47. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
23 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
24 unscrupulous or substantially injurious to employees, and were without valid justification or
25 utility for which this Court should issue equitable and injunctive relief pursuant to Section
26 17203 of the California Business & Professions Code, including restitution of wages wrongfully
27 withheld.

28 48. By the conduct alleged herein, DEFENDANT’s practices were deceptive and

1 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFFS, and other
2 members of the CALIFORNIA CLASS, Fair Labor Standards Act wages due for overtime
3 worked as a result of failing to include incentive compensation into their regular rates for
4 purposes of computing overtime pay, failed to provide the legally mandated meal and rest
5 periods, the required amount of compensation for missed meal and rest periods and overtime
6 and minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary
7 business expenses incurred, due to a business practice that cannot be justified, pursuant to the
8 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
9 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
10 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
11 withheld.

12 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
13 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and
14 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

16 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
17 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
18 all legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA
19 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

28 53. By and through the unlawful and unfair business practices described herein,

1 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
2 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
3 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
4 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
5 to unfairly compete against competitors who comply with the law.

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

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

16 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
17 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
18 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
19 engaging in any unlawful and unfair business practices in the future.

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

27
28 **SECOND CAUSE OF ACTION**

For Failure To Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197 and 1197.1]
(By PLAINTIFFS and the CALIFORNIA CLASS
and Against All Defendants)

58. 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.

59. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

63. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS.

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

65. In committing these violations of the California Labor Code, DEFENDANT

1 inaccurately calculated the correct time worked and consequently underpaid the actual time
2 worked by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANT
3 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
4 violation of the California Labor Code, the Industrial Welfare Commission requirements and
5 other applicable laws and regulations.

6 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
7 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
8 minimum wage compensation for their time worked for DEFENDANT.

9 67. During the CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted
10 or suffered PLAINTIFFS and CLASS members to work without paying them for all the time
11 they were under DEFENDANT's control. As such, during the CALIFORNIA CLASS PERIOD,
12 PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time
13 worked that they were entitled to, constituting a failure to pay all earned wages.

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

19 69. DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA CLASS were under compensated for their time worked.
21 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
22 employees for their labor as a matter of company policy, practice and procedure, and
23 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
24 of the CALIFORNIA CLASS the correct minimum wages for their time worked.

25 70. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time
27 worked and provide them with the requisite compensation, DEFENDANT acted and continues
28 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members

1 of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and
3 legal rights, and otherwise causing them injury in order to increase company profits at the
4 expense of these employees.

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

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

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

21 72. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though full set forth herein, the prior paragraphs of this
23 Complaint.

24 73. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT's willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
27 employees for all overtime worked, including, work performed in excess of eight (8) hours in
28 a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

11 77. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and CALIFORNIA
12 CLASS Members were required, permitted or suffered by DEFENDANT to work for
13 DEFENDANT and were not paid for all the time they worked including overtime work.

14 78. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
15 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and
16 practice that failed to accurately record overtime worked by PLAINTIFFS and other
17 CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFFS and the
18 other members of the CALIFORNIA CLASS for overtime worked, including, the overtime
19 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a
20 workday, and/or forty (40) hours in any workweek.

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

27 80. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 the PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full

1 compensation for overtime worked.

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

10 82. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS have been paid less for overtime worked that they are
12 entitled to, constituting a failure to pay all earned wages..

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

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

24 85. DEFENDANT knew or should have known that PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
26 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
27 employees for their labor as a matter of company policy, practice and procedure, and
28 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members

1 of the CALIFORNIA CLASS for overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

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

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

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

25 88. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

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

90. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members who were not provided a meal 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 a meal period was not provided.

91. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

2 92. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
4 Complaint.

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

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

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

23 **SIXTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 2802]**

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

27 96. PLAINTIFFS and the other CALIFORNIA CLASS members reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

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

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

8 98. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
9 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
10 members for required expenses incurred in the discharge of their job duties for
11 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
12 CALIFORNIA CLASS members for expenses which included, but were not limited to, costs
13 related to using their personal cellular phones all on behalf of and for the benefit of
14 DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members
15 were required by DEFENDANT to use their personal cell phones to respond to work related
16 issues. DEFENDANT's policy, practice and procedure was to not reimburse PLAINTIFFS
17 and the CALIFORNIA CLASS members for expenses resulting from using their personal
18 cellular phones for DEFENDANT within the course and scope of their employment for
19 DEFENDANT. These expenses were necessary to complete their principal job duties.
20 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
21 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
22 and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
23 PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an employer is
24 required to do under the laws and regulations of California.

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

1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

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

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

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

16
17 **EIGHTH CAUSE OF ACTION**

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

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

20 **(By Plaintiffs Dremee and Monroe and the CALIFORNIA CLASS and Against All**
21 **Defendants)**

22 104. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
23 herein, the prior paragraphs of this Complaint.

24 105. Cal. Lab. Code § 200 provides that:

25 As used in this article:

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

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

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

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

6 107. 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
8 her employment, his or her wages shall become due and payable not later than
9 72 hours thereafter, unless the employee has given 72 hours previous notice of
10 his or her intention to quit, in which case the employee is entitled to his or her
11 wages at the time of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be entitled to
12 receive payment by mail if he or she so requests and designates a mailing
address. The date of the mailing shall constitute the date of payment for
13 purposes of the requirement to provide payment within 72 hours of the notice
of quitting.

14 108. There was no definite term in Plaintiff Dremee’s, Plaintiff Monroe’s, or any
15 CALIFORNIA CLASS Members’ employment contract.

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

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

21 110. The employment of Plaintiffs Dremee and Monroe and many CALIFORNIA
22 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
23 these employees who missed meal and rest breaks, as required by law.

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

1 **NINTH CAUSE OF ACTION**

2 **[Disability and/or FMLA Leave Discrimination and Retaliation For the Exercise of**
3 **Rights Guaranteed Under the FEHA, Participating in Protected Activities, and/or**

4 **Opposing DEFENDANT's Failure to Provide Such Rights]**

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

6 **(By Plaintiff Xavier Dremee Against All Defendants)**

7 112. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 113. In April of 2020, Plaintiff Dremee consulted with a doctor regarding health
10 issues as he was immune compromised and at a high risk of contracting and having severe
11 respiratory problems. Furthermore, the continuous stress from work caused Plaintiff Dremee
12 to feel afraid of going into work, as he would have put himself at more risk of additional
13 mental anguish. Consequently, the work pressures and fear accumulated into severe mental
14 distress with the workplace and the adverse treatment Plaintiff Dremee had received from
15 his supervisors. In or around April of 2020, Plaintiff Dremee went out on leave for with a
16 doctor's note due to his underling health condition amidst the COVID-19 pandemic -
17 Plaintiff Dremee provided a doctor's note to DEFENDANT regarding his medical leave.
18 The doctor's note stated that according to the CDC Guidelines, Plaintiff Dremee was
19 considered high risk for COVID-19 and hence it was recommended a 6 foot separation from
20 co-workers and or patients. Plaintiff Dremee's leave was for a month period. After
21 notifying DEFENDANT of his medical condition, DEFENDANT terminated Plaintiff
22 Dremee in or around May of 2020.

23 114. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
24 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
25 including the following bases for liability:

26 a. Taking adverse employment actions against Plaintiff Dremee, including
27 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
28 otherwise discriminating against Plaintiff Dremee, in whole or in part on the basis of

1 Plaintiff Dremee's disability, and/or having taken FMLA leave in violation of Government
2 Code Section 12940(a);

3 b. Harassing Plaintiff Dremee and/or creating a hostile work environment,
4 in whole or in part on the basis of Plaintiff Dremee's disability, and/or having taken FMLA
5 leave in violation of Government Code Section 12940(j);

6 c. Failing to take all reasonable steps to prevent discrimination and
7 harassment based on disability, and/or having taken FMLA leave in violation of
8 Government Code section 12940(k);

9 d. Retaliating against Plaintiff Dremee for seeking to exercise rights
10 guaranteed under FEHA, participating in protected activities, and/or opposing
11 DEFENDANT's failure to provide such rights, in violation of Government Code Section
12 12940(h).

13 115. As a proximate result of DEFENDANT's willful, knowing, and intentional
14 discrimination against Plaintiff Dremee, Plaintiff Dremee has sustained and continues to
15 sustain substantial losses of earnings and other employment benefits.

16 116. As a proximate result of DEFENDANT's willful, knowing, and intentional
17 discrimination against Plaintiff Dremee, Plaintiff Dremee has suffered and continues to
18 suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his
19 damage in a sum according to proof.

20 117. Plaintiff Dremee has incurred and continues to incur legal expenses and
21 attorneys' fees. Pursuant to Government Code Section 12965(b), Plaintiff Dremee is
22 entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount
23 according to proof.

24 118. DEFENDANT's misconduct was committed intentionally, in a malicious,
25 oppressive manner, and fraudulent manner entitling Plaintiff Dremee to punitive damages
26 against DEFENDANT.

27
28 **TENTH CAUSE OF ACTION**

Wrongful Termination In Violation of Public Policy
(By Plaintiff Dremee Against All Defendants)

119. PLAINTIFFS reallege and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. In April of 2020, Plaintiff Dremee consulted with a doctor regarding health issues as he was immune compromised and at a high risk of contracting and having severe respiratory problems. Furthermore, the continuous stress from work caused Plaintiff Dremee to feel afraid of going into work, as he would have put himself at more risk of additional mental anguish. Consequently, the work pressures and fear accumulated into severe mental distress with the workplace and the adverse treatment Plaintiff Dremee had received from his supervisors. In or around April of 2020, Plaintiff Dremee went out on leave for with a doctor's note due to his underling health condition amidst the COVID-19 pandemic - Plaintiff Xavier Dremee provided a doctor's note to DEFENDANT regarding his medical leave. The doctor's note stated that according to the CDC Guidelines, Plaintiff Dremee was considered high risk for COVID-19 and hence it was recommended a 6 foot separation from co-workers and or patients. Plaintiff Dremee's leave was for a month period. After notifying DEFENDANT of his medical condition, DEFENDANT terminated Plaintiff Dremee in or around May of 2020.

121. DEFENDANT terminated Plaintiff Dremee's employment in violation of various fundamental public policies underlying both state and federal laws. Specifically, Plaintiff Dremee's employment was terminated in part because of his protected status(i.e., disability, medical leave, and/or good faith complaints). These actions were in violation of FEHA, the California Constitution, and California Labor Code Section 1102.5.

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

123. As a result of DEFENDANT's wrongful termination of Plaintiff Dremee's

1 employment, Plaintiff Dremee has suffered general and special damages in sums according
2 to proof.

3 124. DEFENDANT's wrongful termination of Plaintiff Dremee's employment was
4 done intentionally, in a malicious, fraudulent, oppressive manner entitling Plaintiff Dremee
5 to punitive damages.

6 125. Plaintiff Dremee has incurred and continues to incur legal expenses and
7 attorneys' fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

8
9 **ELEVENTH CAUSE OF ACTION**

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

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

12 **(By Plaintiff Dremee and Against All Defendants)**

13 126. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
14 herein, the prior paragraphs of this Complaint.

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

25 128. Plaintiff Dremee, and such persons that may be added from time to time who
26 satisfy the requirements and exhaust the administrative procedures under the Private
27 Attorney General Act, brings this Representative Action on behalf of the State of California
28 with respect to himself and all individuals who are or previously were employed by

1 Defendant Aurora - San Diego, LLC in California and were classified as non-exempt
2 employees (the "AGGRIEVED EMPLOYEES") during the time period of July 30, 2019
3 August 16, 2022 (the "PAGA PERIOD").

4 129. On July 30, 2020, Plaintiff Dremee gave written notice by electronic mail to
5 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
6 employer of the specific provisions of this code alleged to have been violated as required by
7 Labor Code § 2699.3. On January 7, 2021, Plaintiff Dremee gave amended written notice
8 by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
9 certified mail to the employer of the specific provisions of this code alleged to have been
10 violated as required by Labor Code § 2699.3. The amended written notice added Signature
11 Healthcare Services, LLC as an additional Defendant. The statutory waiting period for
12 Plaintiff Dremee to add these allegations to the Complaint has expired. As a result, pursuant
13 to Section 2699.3, Plaintiff Dremee may now commence a representative civil action under
14 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
15 AGGRIEVED EMPLOYEES as herein defined.

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

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

Plaintiff Dremee hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff Dremee and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory

damages for minimum and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

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

G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On behalf of Plaintiff Dremee for the Ninth and Tenth causes of action:

A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

B) Special and General damages according to proof;

C) Statutory damages, penalties and attorney's fees;

D) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;

E) For loss of earnings (both past and future); and,

F) For interest at the legal rate in an amount according to proof.

4. On behalf of the State of California and with respect to all AGGRIEVED

1 EMPLOYEES:

2 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
3 General Act of 2004.

4 5. On all claims:

5 A) An award of interest, including prejudgment interest at the legal rate;

6 B) Such other and further relief as the Court deems just and equitable; and,

7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
8 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
9 §2802.

10
11 Dated: August 17, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

12
13
14 By: /s/ Norman Blumenthal
15 Norman B. Blumenthal
16 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

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

Dated: August 17, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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