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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By Jose Hernandez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

XAVIER DREMEE, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

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

Defendants.

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

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

4 **THE PARTIES**

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

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

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

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

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

23 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all individuals who are or previously were employed by Aurora - San Diego, LLC
25 and/or Signature Healthcare Services, LLC in California and classified as non-exempt
26 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
27 prior to the filing of this Complaint and ending on the date as determined by the Court (the
28 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of

1 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

2 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
3 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
4 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which
5 failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged
6 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
7 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
8 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
9 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
10 the other members of the CALIFORNIA CLASS who have been economically injured by
11 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
12 equitable relief.

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

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

1 Defendants' agents, servants and/or employees.

2
3 **THE CONDUCT**

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

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

1 other CALIFORNIA CLASS Members were required from time to time to perform work as
2 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
3 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
4 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
5 which these employees were required by DEFENDANT to work ten (10) hours of work.
6 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
7 without additional compensation and in accordance with DEFENDANT's strict corporate policy
8 and practice.

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

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

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

26 15. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANT to use their own personal
28 cellular phones as a result of and in furtherance of their job duties as employees for

1 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
2 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
3 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
4 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
5 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
6 for the benefit of DEFENDANT.

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

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

27 18. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA
28 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the

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

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

21 20. In April of 2020, PLAINTIFF consulted with a Doctor regarding health issues as
22 he was immune compromised and at a high risk of contracting and having severe respiratory
23 problems. Furthermore, the continuous stress from work caused PLAINTIFF to feel afraid of
24 going into work, as he would have put himself at more risk of additional mental anguish.
25 Consequently, the work pressures and fear accumulated into severe mental distress with the
26 workplace and the adverse treatment PLAINTIFF had received from his supervisors. In or
27 around April of 2020, PLAINTIFF went out on leave for with a Dr.’s note due to his underling
28 health condition amidst the COVID-19 pandemic - PLAINTIFF provided a Dr.’s note to

1 DEFENDANT regarding his medical leave. The Dr.'s notes stated that according to the CDC
2 Guidelines, PLAINTIFF was considered high risk for COVID-19 and hence it was
3 recommended a 6 foot separation from co-workers and or patients. PLAINTIFF's leave was
4 for a month period. After notifying DEFENDANT of his medical condition, DEFENDANT
5 terminated PLAINTIFF in or around May of 2020. DEFENDANT claimed it could not follow
6 the CDC Guidelines and accommodate PLAINTIFF's medical condition. Prior to filing this
7 action, PLAINTIFF exhausted his administrative remedies by filing a timely administrative
8 complaint with the Department of Fair Employment and Housing ("DFEH") and received a
9 DFEH right-to-sue letter on January 3, 2021.

10 11 **JURISDICTION AND VENUE**

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

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

21 22 **THE CALIFORNIA CLASS**

23 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
26 all individuals who are or previously were employed by Aurora - San Diego, LLC and/or
27 Signature Healthcare Services, LLC in California and classified as non-exempt employees (the
28 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the

1 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
2 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
3 CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

- 27 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
28 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or

1 deceptively having in place company policies, practices and procedures
2 that failed to record and pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for all time worked, including minimum wages
4 owed and overtime wages owed for work performed by these employees;

5 (b) Committing an act of unfair competition in violation of the UCL, by
6 failing to provide the PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with the legally required meal and rest periods;
8 and,

9 (c) Committing an act of unfair competition in violation of the California
10 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
11 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
12 the CALIFORNIA CLASS members with necessary expenses incurred in
13 the discharge of their job duties.

14 29. 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 such persons is impracticable and the disposition of
18 their claims as a class will benefit the parties and the Court;

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

22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
24 other members of the CALIFORNIA CLASS, was classified as a non-
25 exempt employee paid on an hourly basis who was subjected to the
26 DEFENDANT's deceptive practice and policy which failed to provide the
27 legally required meal and rest periods to the CALIFORNIA CLASS and
28 thereby underpaid compensation to PLAINTIFF and CALIFORNIA

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

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

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

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

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

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

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

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

20 1) The interests of the members of the CALIFORNIA CLASS in
21 individually controlling the prosecution or defense of separate
22 actions in that the substantial expense of individual actions will be
23 avoided to recover the relatively small amount of economic losses
24 sustained by the individual CALIFORNIA CLASS Members when
25 compared to the substantial expense and burden of individual
26 prosecution of this litigation;

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

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

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

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

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

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

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

27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 CLASS because in the context of employment litigation a substantial
2 number of individual CALIFORNIA CLASS Members will avoid
3 asserting their rights individually out of fear of retaliation or adverse
4 impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before the
7 Court;

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

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

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

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

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

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

28 32. DEFENDANT maintains records from which the Court can ascertain and identify

1 by job title each of DEFENDANT's employees who as have been intentionally subjected to
2 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
3 seek leave to amend the Complaint to include any additional job titles of similarly situated
4 employees when they have been identified.

5 **THE CALIFORNIA LABOR SUB-CLASS**

6 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
7 Eighth of Action on behalf of a California sub-class, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed by Aurora - San Diego, LLC
9 and/or Signature Healthcare Services, LLC in California (the "CALIFORNIA LABOR SUB-
10 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
11 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
12 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
13 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
14 (\$5,000,000.00).

15 34. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
19 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
20 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
21 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
22 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA
23 LABOR SUB-CLASS Members wages to which these employees are entitled in order to
24 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates
25 to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
26 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

27 35. DEFENDANT maintains records from which the Court can ascertain and identify
28 by name and job title, each of DEFENDANT's employees who have been intentionally

1 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
3 similarly situated employees when they have been identified.

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

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

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

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

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

- 1 LABOR SUB-CLASS the correct minimum wage pay for which
2 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 3 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
4 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
5 itemized statement in writing showing the corresponding correct amount
6 of wages earned by the employee;
- 7 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
10 meal breaks and the legally required off-duty rest breaks;
- 11 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
12 when an employee is discharged or quits from employment, the employer
13 must pay the employee all wages due without abatement, by failing to
14 tender full payment and/or restitution of wages owed or in the manner
15 required by California law to the members of the CALIFORNIA LABOR
16 SUB-CLASS who have terminated their employment; and,
- 17 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
18 the CALIFORNIA LABOR SUB-CLASS members with necessary
19 expenses incurred in the discharge of their job duties.

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

- 22 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
23 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
24 Members is impracticable and the disposition of their claims as a class
25 will benefit the parties and the Court;
- 26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
27 that are raised in this Complaint are common to the CALIFORNIA
28 LABOR SUB-CLASS and will apply to every member of the

CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

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

40. 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 to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA LABOR SUB-
5 CLASS, which would establish incompatible standards of
6 conduct for the DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS would as a practical
9 matter be dispositive of the interests of the other members
10 not parties to the adjudication or substantially impair or
11 impede their ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA LABOR SUB-CLASS Members will
14 avoid asserting their legal rights out of fear of retaliation by
15 DEFENDANT, which may adversely affect an individual's job
16 with DEFENDANT or with a subsequent employer, the Class
17 Action is the only means to assert their claims through a
18 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 41. 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 LABOR
27 SUB-CLASS predominate over any question affecting only individual
28 CALIFORNIA LABOR SUB-CLASS Members;

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

- time 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.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

45. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,

1 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
2 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
3 unfair competition, including restitution of wages wrongfully withheld.

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

10 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
11 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
12 meal and rest periods, the required amount of compensation for missed meal and rest periods
13 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
14 all necessary business expenses incurred, due to a business practice that cannot be justified,
15 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
16 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
17 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
18 wrongfully withheld.

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

23 49. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
25 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
26 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

27 50. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

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

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

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

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

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

27 56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

1 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
2 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
3 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
4 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
5 engage in these unlawful and unfair business practices.

6
7 **SECOND CAUSE OF ACTION**

8 **For Failure To Pay Minimum Wages**

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

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

11 **and Against All Defendants)**

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

15 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
17 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
18 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
19 Members.

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

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

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

27 62. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of

1 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
2 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS.

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

8 64. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately calculated the correct time worked and consequently underpaid the actual time
10 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
11 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
12 benefits in violation of the California Labor Code, the Industrial Welfare Commission
13 requirements and other applicable laws and regulations.

14 65. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
16 receive the correct minimum wage compensation for their time worked for DEFENDANT.

17 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
18 required, permitted or suffered PLAINTIFF and LABOR SUB-CLASS members to work
19 without paying them for all the time they were under DEFENDANT's control. As such, during
20 the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled
22 to, constituting a failure to pay all earned wages.

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

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

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

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

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

25 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
27 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
28 including overtime work.

1 77. DEFENDANT's unlawful wage and hour practices manifested, without
2 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
3 implementing a policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
5 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
6 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
7 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
8 workweek.

9 78. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
11 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
12 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
13 of the California Labor Code, the Industrial Welfare Commission requirements and other
14 applicable laws and regulations.

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

18 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
19 from the overtime requirements of the law. None of these exemptions are applicable to the
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
22 subject to a valid collective bargaining agreement that would preclude the causes of action
23 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
24 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
25 negotiable, non-waiveable rights provided by the State of California.

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

1 82. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
3 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
4 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
5 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
6 failed to accurately record and pay as evidenced by DEFENDANT's business records and
7 witnessed by employees.

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

14 84. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
16 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
17 to not pay employees for their labor as a matter of company policy, practice and procedure, and
18 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
19 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

28 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

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

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

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

20 88. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
21 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
22 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
23 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
24 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
25 duties for the legally required off-duty meal periods. As a result of their rigorous work
26 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
27 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
28 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
2 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
3 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
4 in some workdays in which these employees were required by DEFENDANT to work ten (10)
5 hours of work from time to time. As a result, PLAINTIFF and other members of the
6 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

17
18 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
27 time to time required to work in excess of four (4) hours without being provided ten (10) minute
28 rest periods. Further, these employees from time to time were denied their first rest periods of

1 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
2 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
3 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
4 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
6 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
8 periods by DEFENDANT and DEFENDANT's managers.

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

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

18 **SIXTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 2802]**

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

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

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

27 An employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of the
discharge of his or her duties, or of his or her obedience to the directions of

1 the employer, even though unlawful, unless the employee, at the time of
2 obeying the directions, believed them to be unlawful.

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

6 99. PLAINTIFF, 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.

9 100. Cal. Labor Code § 226 provides that an employer must furnish employees 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.

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

1 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
2 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
4 § 226.

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

17
18 **EIGHTH CAUSE OF ACTION**

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

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

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

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

26 104. Cal. Lab. Code § 200 provides that:

27 As used in this article:

28 (a) "Wages" includes all amounts for labor performed by employees of every

1 description, whether the amount is fixed or ascertained by the standard of
2 time, task, piece, Commission basis, or other method of calculation.

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

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

8 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

16 108. 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.

21 109. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
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.

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

1 plus interest and statutory costs as allowed by law.

2
3 **NINTH CAUSE OF ACTION**

4 **[Disability and/or FMLA Leave Discrimination and Retaliation For the Exercise of**
5 **Rights Guaranteed Under the FEHA, Participating in Protected Activities, and/or**
6 **Opposing DEFENDANT's Failure to Provide Such Rights]**

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

8 **(By PLAINTIFF Against All Defendants)**

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

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

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

27 a. Taking adverse employment actions against PLAINTIFF, including
28 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or

1 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
2 PLAINTIFF's disability, and/or having taken FMLA leave in violation of Government Code
3 Section 12940(a);

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

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

10 d. Retaliating against PLAINTIFF for seeking to exercise rights
11 guaranteed under FEHA, participating in protected activities, and/or opposing
12 DEFENDANT's failure to provide such rights, in violation of Government Code Section
13 12940(h).

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

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

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

25 117. DEFENDANT's misconduct was committed intentionally, in a malicious,
26 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
27 against DEFENDANT.
28

1 **TENTH CAUSE OF ACTION**

2 **Wrongful Termination In Violation of Public Policy**

3 **(By PLAINTIFF Against All Defendants)**

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

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

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

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

28 122. As a result of DEFENDANT's wrongful termination of PLAINTIFF's

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

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

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

8 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

24 127. PLAINTIFF, and such persons that may be added from time to time who
25 satisfy the requirements and exhaust the administrative procedures under the Private
26 Attorney General Act, brings this Representative Action on behalf of the State of California
27 with respect to himself and all individuals who worked for Defendant Aurora - San Diego,
28 LLC in California and were classified as non-exempt employees (the "AGGRIEVED

1 EMPLOYEES") during the time period of July 30, 2019 until a date as determined by the
2 Court (the "PAGA PERIOD").

3 128. On July 30, 2020, PLAINTIFF gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
5 employer of the specific provisions of this code alleged to have been violated as required by
6 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
7 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
8 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
9 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

23 130. All of the conduct and violations alleged herein occurred during the
24 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
25 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those

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

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

1. On behalf of the CALIFORNIA CLASS:

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

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

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of

the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or 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 PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

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

3. On behalf of PLAINTIFF 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 EMPLOYEES:

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

5. On all claims:

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

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- 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: February 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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

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DEMAND FOR A JURY TRIAL

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

Dated: February 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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