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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JOSE JHEOVANY GUZMAN, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

AMPAM PARKS MECHANICAL, INC., a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. **20STCV48052**

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. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Ampam Parks Mechanical, Inc. (“DEFENDANT”) is a corporation that
7 at all relevant times mentioned herein conducted and continues to conduct substantial business
8 in the state of California.

9 2. DEFENDANT s California's #1 design-build multifamily residential plumbing
10 subcontractor. Our plumbing specialty is design-build for high-rise, mixed-use, hospitality,
11 senior and student housing.

12 3. PLAINTIFF was employed by DEFENDANT in California from January of 2020
13 to March 11, 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously were employed by DEFENDANT in California
18 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
19 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
20 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
21 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
22 (\$5,000,000.00).

23 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
24 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
25 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
26 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
27 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
28 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA

1 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
2 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
3 the other members of the CALIFORNIA CLASS who have been economically injured by
4 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
5 equitable relief.

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

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

23 24 **THE CONDUCT**

25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

1 and CALIFORNIA CLASS Members to work without paying them for all the time they were
2 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
3 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
5 should have been PLAINTIFF's off-duty meal break. DEFENDANT's policy and practice not
6 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
7 evidenced by DEFENDANT's business records.

8 9. As a result of their rigorous work schedules, PLAINTIFF and other
9 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
10 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
11 other CALIFORNIA CLASS Members were required from time to time to perform work as
12 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
13 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
14 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
15 which these employees were required by DEFENDANT to work ten (10) hours of work.
16 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
17 without additional compensation and in accordance with DEFENDANT's corporate policy and
18 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
19 production levels for each employee at the busy airports they operated at.

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

1 Order requires employers to provide employees with off-duty rest periods, which the California
2 Supreme Court defined as time during which an employee is relieved from all work related
3 duties and free from employer control. In so doing, the Court held that the requirement under
4 California law that employers authorize and permit all employees to take rest period means that
5 employers must relieve employees of all duties and relinquish control over how employees
6 spend their time which includes control over the locations where employees may take their rest
7 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
8 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
9 other CALIFORNIA CLASS Members from unconstrained walks and was unlawful based on
10 Defendant's rule which stated PLAINTIFF and other CALIFORNIA CLASS Members could
11 not leave the work premises during their rest period.

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

27 12. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses

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

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

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

1 15. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
3 a matter of company policy, practice and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal
5 and rest periods. This policy and practice of DEFENDANT is intended to purposefully avoid
6 the payment for all time worked as required by California law which allows DEFENDANT to
7 illegally profit and gain an unfair advantage over competitors who complied with the law. To
8 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
9 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

20 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
22 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
23 did not have a policy or practice which provided timely off-duty meal and rest breaks to
24 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
25 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
26 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
27 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
28 DEFENDANT's business records. To date, DEFENDANT has yet to pay PLAINTIFF all of

1 his wages due to him and DEFENDANT has failed to pay any penalty wages owed to him under
2 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
3 does not exceed the sum or value of \$75,000.

4 18. In or around February of 2020, and continuing throughout the rest of
5 PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to
6 DEFENDANT of DEFENDANT's illegal employment practices, including, but not limited to,
7 DEFENDANT's failure to properly pay health insurance premium to their employees under the
8 Affordable Care Act.

9 19. Subsequent to PLAINTIFF's participation in protective activity by complaining
10 to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected
11 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically,
12 after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment
13 practices in February of 2020, DEFENDANT terminated PLAINTIFF's employment with
14 DEFENDANT in March of 2020. As a result, there is a causal link between the protected
15 activity and DEFENDANT's decision to terminate his employment, which is against public
16 policy.

17 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

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

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

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

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

1 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
4 law by:

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

20 28. 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 CLASS are so numerous
23 that the joinder of all such persons is impracticable and the disposition of
24 their claims as a class will benefit the parties and the Court;
25 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
26 that are raised in this Complaint are common to the CALIFORNIA
27 CLASS will apply to every member of the CALIFORNIA CLASS;
28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
2 other members of the CALIFORNIA CLASS, was classified as a non-
3 exempt employee paid on an hourly basis who was subjected to the
4 DEFENDANT's deceptive practice and policy which failed to provide the
5 legally required meal and rest periods to the CALIFORNIA CLASS and
6 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
7 CLASS. PLAINTIFF sustained economic injury as a result of
8 DEFENDANT's employment practices. PLAINTIFF and the members of
9 the CALIFORNIA CLASS were and are similarly or identically harmed
10 by the same unlawful, deceptive, and unfair misconduct engaged in by
11 DEFENDANT; and,

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

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

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

- 26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA CLASS which would establish
28 incompatible standards of conduct for the parties opposing the

CALIFORNIA CLASS; and/or,

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

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

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA CLASS Members when
3 compared to the substantial expense and burden of individual
4 prosecution of this litigation;

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

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

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

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

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

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

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

1 the business records of DEFENDANT; and,

- 2 (i) Class treatment provides manageable judicial treatment calculated to bring
3 a efficient and rapid conclusion to all litigation of all wage and hour
4 related claims arising out of the conduct of DEFENDANT as to the
5 members of the CALIFORNIA CLASS.

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

11
12 **THE CALIFORNIA LABOR SUB-CLASS**

13 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
14 Eighth of Action on behalf of a California sub-class, defined as all members of the
15 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
16 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
17 to the filing of the complaint and ending on the date as determined by the Court (the
18 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
19 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
20 Members is under five million dollars (\$5,000,000.00).

21 33. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
22 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
23 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
24 to correctly calculate compensation for the time worked by PLAINTIFF and the other members
25 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
26 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
27 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
28 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are

1 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
2 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
3 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

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

10 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

27 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
28 under California law by:

- 1 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS all wages due for overtime worked, for which DEFENDANT is
4 liable pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
10 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
11 itemized statement in writing showing the corresponding correct amount
12 of wages earned by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
16 meal breaks and the legally required off-duty rest breaks;
- 17 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
18 when an employee is discharged or quits from employment, the employer
19 must pay the employee all wages due without abatement, by failing to
20 tender full payment and/or restitution of wages owed or in the manner
21 required by California law to the members of the CALIFORNIA LABOR
22 SUB-CLASS who have terminated their employment; and,
- 23 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
24 the CALIFORNIA LABOR SUB-CLASS members with necessary
25 expenses incurred in the discharge of their job duties.

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

- 28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are

1 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
2 Members is impracticable and the disposition of their claims as a class
3 will benefit the parties and the Court;

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

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

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

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

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA LABOR
4 SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the parties
8 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a practical
11 matter be dispositive of interests of the other members not party to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
15 or refused to act on grounds generally applicable to the CALIFORNIA
16 LABOR SUB-CLASS, making appropriate class-wide relief with respect
17 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
18 DEFENDANT fails to pay all wages due. Including the correct wages for
19 all time worked by the members of the CALIFORNIA LABOR SUB-
20 CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of the
22 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
23 violations of California Law as listed above, and predominate over any
24 question affecting only individual CALIFORNIA LABOR SUB-CLASS
25 Members, and a Class Action is superior to other available methods for
26 the fair and efficient adjudication of the controversy, including
27 consideration of:
- 28 1) The interests of the members of the CALIFORNIA LABOR SUB-

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

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

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

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

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

25 4) A class action is superior to other available methods for the fair
26 and efficient adjudication of this litigation because class treatment
27 will obviate the need for unduly and unnecessary duplicative
28 litigation that is likely to result in the absence of certification of

1 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

- 3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
6 CLASS Members who worked for DEFENDANT in California at any
7 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
8 (i) Class treatment provides manageable judicial treatment calculated to bring
9 a efficient and rapid conclusion to all litigation of all wage and hour
10 related claims arising out of the conduct of DEFENDANT as to the
11 members of the CALIFORNIA LABOR SUB-CLASS.

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 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

1 necessary to restore to any person in interest any money or property, real or
2 personal, which may have been acquired by means of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

4 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Industrial Wage Order(s), the California Code of Regulations and the California
7 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
8 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
9 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
10 unfair competition, including restitution of wages wrongfully withheld.

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

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

26 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
27 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
28 other members of the CALIFORNIA CLASS to be underpaid during their employment with

1 DEFENDANT.

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

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

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

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

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

25 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
26 and do, seek such relief as may be necessary to restore to them the money and property which
27 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and

1 unfair business practices, including earned but unpaid wages for all time worked.

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

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

13
14 **SECOND CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

6 61. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
8 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS.

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

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

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

24 65. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
28 paid less for time worked than they were entitled to, constituting a failure to pay all earned

1 wages.

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

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

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

22 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
25 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
28 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties

1 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
3 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
4 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **THIRD CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

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

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

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

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

20 72. 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 73. Cal. Lab. Code § 510 further provides that employees in California shall not be
23 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
24 unless they receive additional compensation beyond their regular wages in amounts specified
25 by law.

26 74. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage and overtime compensation and interest thereon, together with the
28 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for

1 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

2 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
3 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
4 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
5 including overtime work

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

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

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

23 79. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to the
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
27 subject to a valid collective bargaining agreement that would preclude the causes of action
28 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself

1 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
2 negotiable, non-waiveable rights provided by the State of California.

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

6 81. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
7 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
8 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
9 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
10 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
11 failed to accurately record and pay as evidenced by DEFENDANT's business records and
12 witnessed by employees.

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

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

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

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

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

16
17 **FOURTH CAUSE OF ACTION**

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

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

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

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

25 87. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
28 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR

1 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
2 duties for the legally required off-duty meal periods. As a result of their rigorous work
3 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
4 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
7 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
8 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
9 in some workdays in which these employees were required by DEFENDANT to work ten (10)
10 hours of work from time to time. As a result, PLAINTIFF and other members of the
11 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
12 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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

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

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 226]**

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

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

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

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

100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

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

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

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EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or 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 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 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 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.

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

107. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in

1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

4 108. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
5 CLASS Members has terminated and DEFENDANT has not tendered payment of wages, to
6 these employees who missed meal and rest breaks, as required by law.

7 109. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
9 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time
10 of termination for all employees who terminated employment during the CALIFORNIA
11 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
12 plus interest and statutory costs as allowed by law.

13 14 **NINTH CAUSE OF ACTION**

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

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

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

19 111. Subsequent to PLAINTIFF's participation in protective activity by
20 complaining to DEFENDANT of DEFENDANT's unlawful employment practices,
21 DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against
22 PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of
23 DEFENDANT's unlawful employment practices in or around February of 2020,
24 DEFENDANT terminated PLAINTIFF's employment with DEFENDANT in March of
25 2020. As a result, there is a causal link between the protected activity and DEFENDANT's
26 decision to terminate his employment, which is against public policy.

27 112. PLAINTIFF raised complaints of illegality while he worked for
28 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT

1 retaliated against him by taking adverse employment actions, including employment
2 termination, against him.

3 113. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
4 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
5 and physical pain and anguish, in a sum according to proof.

6 114. As a result of DEFENDANT'S adverse employment actions against
7 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
8 proof.

9 115. DEFENDANT'S misconduct was committed intentionally, in a malicious,
10 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
11 against DEFENDANT.

12 **TENTH CAUSE OF ACTION**

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

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

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

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

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

28 118. PLAINTIFF, and such persons that may be added from time to time who

1 satisfy the requirements and exhaust the administrative procedures under the Private
2 Attorney General Act, brings this Representative Action on behalf of the State of California
3 with respect to himself and all individuals who worked for DEFENDANT in California and
4 were classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the
5 time period of July 30, 2019 until a date as determined by the Court (the "PAGA PERIOD").

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, 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

1 statutory rate;

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

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

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

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

15 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197.

17 3. On behalf of PLAINTIFF for the Ninth cause of action:

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

19 B) Special and General damages according to proof;

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

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

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

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

26 4. On behalf of the State of California and with respect to all AGGRIEVED
27 EMPLOYEES:

28 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;
- 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: December 16, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 

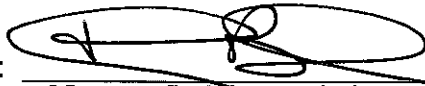
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: December 16, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff