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11 Attorneys for Plaintiff

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

13 **IN AND FOR THE COUNTY OF TULARE**

14 ADRIAN AVILA, on behalf of the State
15 of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 CIGNA HEALTH AND LIFE
20 INSURANCE COMPANY, a Corporation;
21 and Does 1 through 50, Inclusive;

22 Defendants.

Case No. **# 284920**

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

BY FAX

Assigned to Judicial Officer **David C. Mathias**
For All Purposes

CASE MANAGEMENT CONFERENCE

Hearing Date: **3-9-2021**

Time: **8:30am**

Department: **one**

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Cigna Health and Life Insurance
8 Company (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
9 himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

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

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

23 **THE PARTIES**

24 4. Defendant Cigna Health and Life Insurance Company (“DEFENDANT”) is a
25 Corporation that at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.
27

1 5. DEFENDANT is a global health service company and offers health, pharmacy,
2 dental, supplemental insurance and Medicare plans to individuals, families, and businesses.

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

8 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who are or previously were employed by DEFENDANT in
12 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
13 during the time period of July 30, 2019 until a date as determined by the Court (the "PAGA
14 PERIOD").

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

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
27 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

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

13 14 THE CONDUCT

15 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
16 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
17 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
18 calculate minimum and overtime wages for time worked by PLAINTIFF and other
19 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
20 compensation. Specifically, DEFENDANT intentionally and unlawfully failed to pay
21 PLAINTIFF and the AGGRIEVED EMPLOYEES for compensable work time which was spent
22 logging onto computers, logging onto the virtual private networks, initializing software
23 applications, and preparing to take and/or make phone calls. This is due to the fact that
24 DEFENDANT had in place two conflicting policies and practices. On the one hand, these
25 employees were not paid until the start of their scheduled shifts and on the other hand, these
26 employees were required to work before the start of their scheduled shifts preparing their
27 computer systems because it was a requirement for the employees to properly perform the
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1 functions of their jobs. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES who
2 performed this job duty worked off the clock before the start of their scheduled shifts because
3 this preparation was indispensable to performing their jobs. This additional time spent
4 preparing computer systems before the start of their scheduled shifts was work performed
5 subject to DEFENDANT's control and for DEFENDANT's benefit. Consequently, all time
6 spent performing such work constitutes "hours worked" and is therefore compensable.
7 DEFENDANT's policy and practice to not pay employees for compensable work time is
8 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES forfeited wages due them for working without compensation at
10 the correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay
11 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in accordance
12 with applicable law is evidenced by DEFENDANT's business records. This policy and practice
13 of DEFENDANT was intended to purposefully avoid the payment of the correct compensation
14 as required by California law which allowed DEFENDANT to illegally profit and gain an unfair
15 advantage over competitors who complied with the law.

16 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
17 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
18 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
20 time worked, meaning the time during which an employee was subject to the control of an
21 employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT's control. Specifically, DEFENDANT required
24 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
25 meal break. PLAINTIFF was from time to time interrupted by work assignments. As a result,
26 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
27 compensation by working without their time being accurately recorded and without
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1 compensation at the applicable minimum wage and overtime rates. To the extent that the time
2 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
3 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
4 1197, and 1197.1.

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

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

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

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

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

10 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
11 employees with an accurate itemized wage statement in writing showing, among other things,
12 gross wages earned and all applicable hourly rates in effect during the pay period and the
13 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
14 failed to provide to PLAINTIFF and the CALIFORNIA AGGRIEVED EMPLOYEES wage
15 statements that identify the correct gross and net wages earned, the applicable number of hours
16 worked and rates of pay. Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an
18 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

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

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

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

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

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JURISDICTION AND VENUE

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

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

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

27. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California

1 with respect to himself and all individuals who are or previously were employed by
2 DEFENDANT in California and who were classified as non exempt employees
3 (“AGGRIEVED EMPLOYEES”) during the time period of July 30, 2019 until a date as
4 determined by the Court (the "PAGA PERIOD").

5 28. On July 30, 2020, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
9 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
10 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 29. 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
17 minimum wages, (d) failed to pay overtime wages, (e) failed to reimburse employees for
18 required expenses, and (f) failed to provide wages when due, all in violation of the
19 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
20 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
21 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
22 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
23 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
24 Attorney General Act of 2004 as the representative of the State of California for the illegal
25 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

1 **PRAYER FOR RELIEF**

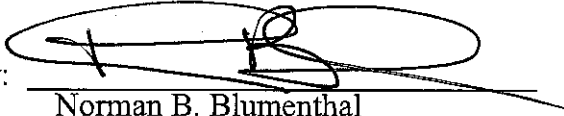
2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

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

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

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

10 Dated: October 29, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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14 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

July 30, 2020

CA2181

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Cigna Health and Life Insurance Company
Certified Mail #7020129000153360786
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Cigna Health and Life Insurance Company in California and classified as non-exempt employees during the time period of July 23, 2019 until a date as determined by the Court. Our offices represent Plaintiff Adrian Avila (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Cigna Health and Life Insurance Company (“Defendant”). Plaintiff was employed by Defendant in California as a Customer Service Advocate from January of 2020 to June of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees

reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

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

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

10 ADRIAN AVILA, an individual, on behalf
11 of himself and on behalf of all persons
similarly situated,

12 Plaintiff,

13 vs.

14 CIGNA HEALTH AND LIFE
15 INSURANCE COMPANY, a Corporation;
and Does 1 through 50, Inclusive;

16 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

1 Plaintiff Adrian Avila (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees, alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. Defendant Cigna Health and Life Insurance Company (“DEFENDANT”) is a
7 Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California.

9 2. DEFENDANT is a global health service company and offers health, pharmacy,
10 dental, supplemental insurance and Medicare plans to individuals, families, and businesses.

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

16 4. PLAINTIFF brings this Class Action on behalf of 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 on the date four (4) years prior to the filing of this Complaint and ending on
20 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
21 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
22 dollars (\$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 for all their overtime worked. DEFENDANT’s
27 policy and practice alleged herein is an unlawful, unfair and deceptive business practice
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1 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
2 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
3 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
4 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
5 who have been economically injured by DEFENDANT's past and current unlawful conduct,
6 and all other appropriate legal and equitable relief.

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

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

24 25 **THE CONDUCT**

26 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
27 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
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1 CLASS for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally
2 failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees the
4 correct compensation. Specifically, DEFENDANT intentionally and unlawfully failed to pay
5 PLAINTIFF and the CALIFORNIA CLASS Members for compensable work time which was
6 spent logging onto computers, logging onto the virtual private networks, initializing software
7 applications, and preparing to take and/or make phone calls. This is due to the fact that
8 DEFENDANT had in place two conflicting policies and practices. On the one hand, these
9 employees were not paid until the start of their scheduled shifts and on the other hand, these
10 employees were required to work before the start of their scheduled shifts preparing their
11 computer systems because it was a requirement for the employees to properly perform the
12 functions of their jobs. As a result, PLAINTIFF and the CALIFORNIA CLASS Members who
13 performed this job duty worked off the clock before the start of their scheduled shifts because
14 this preparation was indispensable to performing their jobs. This additional time spent
15 preparing computer systems before the start of their scheduled shifts was work performed
16 subject to DEFENDANT's control and for DEFENDANT's benefit. Consequently, all time
17 spent performing such work constitutes "hours worked" and is therefore compensable.
18 DEFENDANT's policy and practice to not pay employees for compensable work time is
19 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and the other
20 members of the CALIFORNIA CLASS forfeited wages due them for working without
21 compensation at the correct minimum wage and overtime rates. DEFENDANT's policy and
22 practice to not pay the members of the CALIFORNIA CLASS the correct compensation for all
23 time worked in accordance with applicable law is evidenced by DEFENDANT's business
24 records. This policy and practice of DEFENDANT was intended to purposefully avoid the
25 payment of the correct compensation as required by California law which allowed
26 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
27 with the law.

1 9. 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. Specifically, DEFENDANT required
9 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
10 meal break. PLAINTIFF was from time to time interrupted by work assignments. As a result,
11 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
12 compensation by working without their time being accurately recorded and without
13 compensation at the applicable minimum wage and overtime rates. To the extent that the time
14 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
15 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
16 1197, and 1197.1.

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

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

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

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

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

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

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

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

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

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

7 20. In or around May of 2020, and continuing throughout the rest of PLAINTIFF's
8 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
9 DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT's
10 failure to properly pay PLAINTIFF wages owed to PLAINTIFF for time worked.

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

18 19 **JURISDICTION AND VENUE**

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

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

THE CALIFORNIA CLASS

24. 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 on the date 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).

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

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

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

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

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

26 30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
27 CLASS Members is impracticable.

1 31. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
2 law by:

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

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

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

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

26 (e) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
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1 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
2 the CALIFORNIA CLASS members with necessary expenses incurred in
3 the discharge of their job duties.

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

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

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

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

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

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

22 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
23 act on grounds generally applicable to the CALIFORNIA CLASS, making
24 appropriate class-wide relief with respect to the CALIFORNIA CLASS
25 as a whole in that DEFENDANT failed to pay all wages due. Including
26 the correct overtime rate, for all worked by the members of the
27 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 avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

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

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

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

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

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

2 (c) The members of the CALIFORNIA CLASS are so numerous that it is
3 impractical to bring all members of the CALIFORNIA CLASS before the
4 Court;

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

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

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

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

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

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

25 35. DEFENDANT maintains records from which the Court can ascertain and identify
26 by job title each of DEFENDANT's employees who as have been intentionally subjected to
27 DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend the

1 Complaint to include any additional job titles of similarly situated employees when they have
2 been identified.

3 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

24 38. DEFENDANT maintains records from which the Court can ascertain and identify
25 by name and job title, each of DEFENDANT’s employees who have been intentionally
26 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFF will seek leave to amend
27 the complaint to include any additional job titles of similarly situated employees when they have
28

1 been identified.

2 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
3 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

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

- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that it is impractical to bring all members of the CALIFORNIA
3 LABOR SUB-CLASS before the Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
5 Members, will not be able to obtain effective and economic legal redress
6 unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations and
9 other improprieties, and in obtaining adequate compensation for the
10 damages and injuries which DEFENDANT's actions have inflicted upon
11 the CALIFORNIA LABOR SUB-CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally applicable
16 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
17 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
18 CLASS as a whole;
- 19 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
20 ascertainable from the business records of DEFENDANT. The
21 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
22 CLASS Members classified as non-exempt employees during the
23 CALIFORNIA LABOR SUB-CLASS PERIOD; 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 LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

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

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

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

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5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

6 77. 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 78. 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
12 accurately calculate and pay minimum and reporting time wages to PLAINTIFF and
13 CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

1 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
2 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

6 91. 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 92. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
10 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
11 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
12 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
13 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
14 duties for the legally required off-duty meal periods. As a result of their rigorous work
15 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
16 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
17 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
19 by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF
20 and CALIFORNIA LABOR SUB-CLASS Members with a second off-duty meal period from
21 time to time in which these employees were required by DEFENDANT to work ten (10) hours
22 of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
24 DEFENDANT's corporate policy and practice.

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

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

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8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

9
10 **SIXTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 226]**

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

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

18 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation
22 is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission,

25 (3) the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,

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

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

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

7
8 **SEVENTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

107. 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.

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

As used in this article:

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

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

109. 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."

110. 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.

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

112. Cal. Lab. Code § 203 provides:

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

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

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

NINTH CAUSE OF ACTION

Wrongful Termination In Violation of Public Policy

(By PLAINTIFF Against All Defendants)

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

116. Subsequent to PLAINTIFF's participation in protective activity by complaining to DEFENDANT of DEFENDANT's unlawful employment practices, DEFENDANT subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF. Specifically, after PLAINTIFF complained to his supervisor(s) of DEFENDANT's unlawful employment practices in or around May of 2020, DEFENDANT terminated PLAINTIFF's employment with DEFENDANT in June of 2020. As a result, there is a causal link between the protected activity and DEFENDANT's decision to terminate his employment, which is against public policy.

117. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT retaliated against him by taking adverse employment actions, including employment termination, against him.

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

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

120. DEFENDANT’S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against DEFENDANT.

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;

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
10 action pursuant to Cal. Code of Civ. Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
14 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
15 C) Meal and rest period compensation pursuant to California Labor Code Section
16 226.7 and the applicable IWC Wage Order;
17 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
18 in which a violation occurs and one hundred dollars (\$100) per each member of
19 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
20 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
21 an award of costs for violation of Cal. Lab. Code § 226;
22 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
23 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
24 costs of suit;
25 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
26 1197;
27 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
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CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,

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

3. On behalf of PLAINTIFF for the Ninth cause 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 all claims:

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

Dated: July 20, 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: July 20, 2020 BLUMENTHAL NORDREHAUG BHOWMIKDE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff