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ENDORSED FILED

Clerk of the Superior Court
County of Lassen

NOV 12 2021

By L. NIEMEYER
DEPUTY CLERK

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

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

10 JACQUELINE MARSHALL, LANCE
11 PHILLIPS, KRISTIN KNOWLES, CHRIS
12 ANDERSON, KAYVAN MARSHALL,
13 KANE EDWARDS, JORDAN MOSER,
14 KYLE EVANS, JENNA DIAZ, TERRI
15 MAURICIO, JOANN LEE, TEISLEYE
SMITH, LAUREN YOUNG, HEATHER
IMHOF, STEPHANIE SWISHER, JOHN
SICKMAN and MARK HARMON,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

16 Plaintiff,

17 vs.

18 PHI AIR MEDICAL, LLC, a Limited
19 Liability Company; PHI HEALTH, LLC, a
20 Limited Liability Company; and Does 1
through 50, Inclusive;

21 Defendants.

Case No. 63485

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

File by Jay

1 Plaintiffs Jacqueline Marshall, Lance Phillips, Kristin Knowles, Chris Anderson, Kayvan
2 Marshall, Kane Edwards, Jordan Moser, Kyle Evans, Jenna Diaz, Terri Mauricio, Joann Lee,
3 Teisleye Smith, Lauren Young, Heather Imhof, Stephanie Swisher, John Sickman and Mark
4 Harmon (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated
5 current and former employees, allege on information and belief, except for their own acts and
6 knowledge which are based on personal knowledge, the following:

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8 **THE PARTIES**

9 1. Defendant PHI Air Medical, LLC (“DEFENDANT”) is a limited liability
10 company that at all relevant times mentioned herein conducted and continues to conduct
11 substantial and regular business throughout California.

12 2. Defendant PHI health, LLC (“DEFENDANT”) is a limited liability company that
13 at all relevant times mentioned herein conducted and continues to conduct substantial and
14 regular business throughout California.

15 3. As evidenced by PLAINTIFFS’ paychecks and company documents, Defendants
16 PHI Air Medical, LLC and PHI Health, LLC were joint employers of PLAINTIFFS and are
17 referred to herein as (“DEFENDANT”).

18 4. DEFENDANT is an air ambulance service provider, providing air medical
19 services and outreach education to local communities and leading healthcare systems.

20 5. Plaintiff Marshall was employed by DEFENDANT in California as a non-exempt
21 employee entitled to overtime pay and meal and rest periods from February of 2017 to July
22 2020. Plaintiff Marshall was at all times relevant mentioned herein classified by DEFENDANT
23 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
24 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
25 but not limited to, performance incentive wages.

26 6. Plaintiff Phillips was employed by DEFENDANT in California as a non-exempt
27 employee entitled to overtime pay and meal and rest periods from September of 2015 to July
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1 2020. Plaintiff Phillips was at all times relevant mentioned herein classified by DEFENDANT
2 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
3 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
4 but not limited to, performance incentive wages.

5 7. Plaintiff Knowles was employed by DEFENDANT in California as a non-exempt
6 employee entitled to overtime pay and meal and rest periods from 2018 to July 2020. Plaintiff
7 Knowles was at all times relevant mentioned herein classified by DEFENDANT as a non-
8 exempt employee paid in whole or in part on an hourly basis and received additional
9 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
10 but not limited to, performance incentive wages.

11 8. Plaintiff Anderson was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from February of 2019 to July
13 2020. Plaintiff Anderson was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
15 received additional compensation from DEFENDANT in the form of non-discretionary
16 incentive wages, including, but not limited to, performance incentive wages.

17 9. Plaintiff Kayvan Marshall has been employed by DEFENDANT in California as
18 a non-exempt employee entitled to overtime pay and meal and rest periods since August of
19 2018. Plaintiff Kayvan Marshall has been at all times relevant mentioned herein classified by
20 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
21 receives additional compensation from DEFENDANT in the form of non-discretionary
22 incentive wages, including, but not limited to, performance incentive wages.

23 10. Plaintiff Moser has been employed by DEFENDANT in California as a non-
24 exempt employee entitled to overtime pay and meal and rest periods since April of 2019.
25 Plaintiff Moser has been at all times relevant mentioned herein classified by DEFENDANT as
26 a non-exempt employee paid in whole or in part on an hourly basis and receives additional
27 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
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1 but not limited to, performance incentive wages.

2 11. Plaintiff Evans was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from April of 2018 to July 2020.
4 Plaintiff Evans was at all times relevant mentioned herein classified by DEFENDANT as a non-
5 exempt employee paid in whole or in part on an hourly basis and received additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
7 but not limited to, performance incentive wages.

8 12. Plaintiff Diaz has been employed by DEFENDANT in California as a non-exempt
9 employee entitled to overtime pay and meal and rest periods since April of 2018. Plaintiff Diaz
10 has been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
11 employee paid in whole or in part on an hourly basis and receives additional compensation from
12 DEFENDANT in the form of non-discretionary incentive wages, including, but not limited to,
13 performance incentive wages.

14 13. Plaintiff Mauricio was employed by DEFENDANT in California as a non-exempt
15 employee entitled to overtime pay and meal and rest periods from March of 2019 to August of
16 2019. Plaintiff Mauricio was at all times relevant mentioned herein classified by DEFENDANT
17 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
18 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
19 but not limited to, performance incentive wages.

20 14. Plaintiff Edwards was employed by DEFENDANT in California as a non-exempt
21 employee entitled to overtime pay and meal and rest periods from October of 2016 to June of
22 2018. Plaintiff Edwards was at all times relevant mentioned herein classified by DEFENDANT
23 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
24 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
25 but not limited to, performance incentive wages.

26 15. Plaintiff Lee has been employed by DEFENDANT in California as a non-exempt
27 employee entitled to overtime pay and meal and rest periods since December of 2019. Plaintiff
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1 Lee has been at all times relevant mentioned herein classified by DEFENDANT as a non-
2 exempt employee paid in whole or in part on an hourly basis and receives additional
3 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
4 but not limited to, performance incentive wages.

5 16. Plaintiff Smith has been employed by DEFENDANT in California as a non-
6 exempt employee entitled to overtime pay and meal and rest periods since January of 2020.
7 Plaintiff Smith has been at all times relevant mentioned herein classified by DEFENDANT as
8 a non-exempt employee paid in whole or in part on an hourly basis and receives additional
9 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
10 but not limited to, performance incentive wages.

11 17. Plaintiff Young was employed by DEFENDANT in California as a non-exempt
12 employee entitled to overtime pay and meal and rest periods from February of 2015 to February
13 of 2018. Plaintiff Young was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
15 received additional compensation from DEFENDANT in the form of non-discretionary
16 incentive wages, including, but not limited to, performance incentive wages.

17 18. Plaintiff Imhof was employed by DEFENDANT in California as a non-exempt
18 employee entitled to overtime pay and meal and rest periods from March of 2018 to March of
19 2020. Plaintiff Imhof was at all times relevant mentioned herein classified by DEFENDANT
20 as a non-exempt employee paid in whole or in part on an hourly basis and received additional
21 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
22 but not limited to, performance incentive wages.

23 19. Plaintiff Swisher has been employed by DEFENDANT in California as a non-
24 exempt employee entitled to overtime pay and meal and rest periods since March of 2019.
25 Plaintiff Swisher has been at all times relevant mentioned herein classified by DEFENDANT
26 as a non-exempt employee paid in whole or in part on an hourly basis and receives additional
27 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
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1 but not limited to, performance incentive wages.

2 20. Plaintiff Sickman has been employed by DEFENDANT in California as a non-
3 exempt employee entitled to overtime pay and meal and rest periods since March of 2019.
4 Plaintiff Sickman has been at all times relevant mentioned herein classified by DEFENDANT
5 as a non-exempt employee paid in whole or in part on an hourly basis and receives additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
7 but not limited to, performance incentive wages.

8 21. Plaintiff Harmon was employed by DEFENDANT in California as a non-exempt
9 employee entitled to overtime pay and meal and rest periods from 2000 to February of 2020.
10 Plaintiff Harmon was at all times relevant mentioned herein classified by DEFENDANT as a
11 non-exempt employee paid in whole or in part on an hourly basis and received additional
12 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
13 but not limited to, performance incentive wages.

14 22. PLAINTIFFS bring this Class Action on behalf of themselves and a California
15 class, defined as all individuals who are or previously were employed by Defendant PHI Air
16 Medical, LLC and/or PHI Health, LLC in California and classified as non-exempt employees
17 (the "CALIFORNIA CLASS") at any time during the period of time from August 2, 2019
18 through October 27, 2021 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

21 23. PLAINTIFFS bring this Class Action on behalf of themselves and a
22 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
23 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
24 practice which failed to lawfully compensate these employees for all their overtime worked.
25 DEFENDANT's policy and practice alleged herein is an unlawful, unfair and deceptive
26 business practice whereby DEFENDANT retained and continues to retain wages due
27 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
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1 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
2 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
4 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

22 23 THE CONDUCT

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

10 27. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
11 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
12 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
13 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
14 all time worked, meaning the time during which an employee was subject to the control of an
15 employer, including all the time the employee was permitted or suffered to permit this work.
16 DEFENDANT required these employees to work off the clock without paying them for all the
17 time they were under DEFENDANT's control. Specifically, DEFENDANT required
18 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
19 duty meal break. PLAINTIFFS are from time to time interrupted by work assignments.
20 PLAINTIFFS and other CALIFORNIA CLASS Members performed work for which they were
21 not compensated. Prior to clocking in for a shift, PLAINTIFFS and other CALIFORNIA
22 CLASS Members were required to perform "pass downs" where information was relayed to
23 them by other employees of DEFENDANT prior to their shift starting. PLAINTIFFS and other
24 CALIFORNIA CLASS Members were not paid for their work time prior to their shifts starting.
25 Additionally, DEFENDANT, as a matter of established company policy and procedure,
26 administered a practice of rounding the actual time worked and recorded by PLAINTIFFS and
27 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
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1 course of their employment, PLAINTIFFS and CALIFORNIA CLASS Members were paid less
2 than they would have been paid had they been paid for actual recorded time rather than
3 “rounded” time. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited
4 minimum wage and overtime compensation by working without their time being accurately
5 recorded and without compensation at the applicable minimum wage and overtime rates. To the
6 extent that the time worked off the clock does not qualify for overtime premium payment,
7 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
8 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

9 28. State and federal law provides that employees must be paid overtime at one-and-
10 one-half times their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS
11 Members were compensated at an hourly rate plus incentive pay that is tied to specific elements
12 of an employee’s performance.

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

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

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

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

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

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

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

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

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

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JURISDICTION AND VENUE

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

39. 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 members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

THE CALIFORNIA CLASS

40. PLAINTIFFS 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 PHI Air Medical, LLC and/or PHI Health, LLC in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period of time from August 2, 2019 through October 27, 2021 (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).

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

42. 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 PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for exemption from the above requirements.

43. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate and record overtime compensation for overtime worked by PLAINTIFFS and the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work.

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

1 45. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
2 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
3 employee for all overtime worked at the applicable rate, as required by California Labor Code
4 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
5 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated
6 so as to include all earnings in the overtime compensation calculation as required by California
7 Labor Code §§ 510, *et seq.*

8 46. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 47. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
11 law by:

- 12 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
13 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
14 place company policies, practices and procedures that failed to pay all
15 minimum and overtime wages due the CALIFORNIA CLASS for all time
16 worked, and failed to accurately record the applicable rates of all overtime
17 worked by the CALIFORNIA CLASS;
- 18 (b) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 unlawfully, unfairly, and/or deceptively having in place a company policy,
21 practice and procedure that failed to correctly calculate overtime
22 compensation due to PLAINTIFFS and the members of the
23 CALIFORNIA CLASS;
- 24 (c) Committing an act of unfair competition in violation of the California
25 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
26 violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*
27 *seq.*, by failing to pay the correct federal overtime wages to the
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1 PLAINTIFFS and the members of the CALIFORNIA CLASS as legally
2 required by the FLSA, and retaining the unpaid federal overtime to the
3 benefit of DEFENDANT.; and,

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

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

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

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of
17 their claims as a class will benefit the parties and the Court;

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

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

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

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

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be

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

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

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS 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

1 sustained by the individual CALIFORNIA CLASS Members when
2 compared to the substantial expense and burden of individual
3 prosecution of this litigation;

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

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

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

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

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

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

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

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

12

13 **THE CALIFORNIA LABOR SUB-CLASS**

14 52. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
15 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
16 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
17 SUB-CLASS") at any time during the period of time from August 2, 2019 through October 27,
18 2021 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.
19 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
20 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 15 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
16 overtime compensation to members of the CALIFORNIA LABOR SUB-
17 CLASS in violation of the California Labor Code and California
18 regulations and the applicable California Wage Order;
- 19 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
20 entitled to overtime compensation for overtime worked under the overtime
21 pay requirements of California law;
- 22 (c) Whether DEFENDANT failed to accurately record the applicable
23 overtime rates for all overtime worked PLAINTIFFS and the other
24 members of the CALIFORNIA LABOR SUB-CLASS;
- 25 (d) Whether DEFENDANT failed to provide PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with legally
27 required uninterrupted thirty (30) minute meal breaks and rest periods;

- (e) Whether DEFENDANT failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT's conduct was willful.

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

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

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS with
2 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
3 and the legally required rest breaks; and,

4 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
5 and the CALIFORNIA CLASS members with necessary expenses
6 incurred in the discharge of their job duties; and,

7 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
8 the members of the CALIFORNIA LABOR SUB-CLASS with an
9 accurate itemized statement in writing showing all accurate and applicable
10 overtime rates in effect during the pay period and the corresponding
11 amount of time worked at each overtime rate by the employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT. The
24 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
25 CLASS Members classified as non-exempt employees during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

4
5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

9 62. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

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

14 64. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
15 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
16 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
17 competition as follows:

18 Any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction. The court
20 may make such orders or judgments, including the appointment of a receiver, as
21 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.

22 Cal. Bus. & Prof. Code § 17203.

23 65. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
27 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code §
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1 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
2 competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

25 76. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
26 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
27 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.

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

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6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

5 82. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
6 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
7 overtime worked and correct applicable overtime rate for the amount of overtime they worked.
8 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
9 deny timely payment of wages due for the overtime worked by PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay
11 these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

8 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
11 including overtime work. As such, during the CALIFORNIA LABOR SUB-CLASS PERIOD,
12 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were paid
13 less for time worked that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

14 92. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
15 CLASS therefore request recovery of all unpaid wages, including overtime wages, according
16 to proof, interest, statutory costs, as well as the assessment of any statutory penalties against
17 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
18 statutes. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
19 faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
20 entitled to seek and recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Minimum Wages**

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

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

5 **and Against All Defendants)**

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

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

14 95. 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 96. 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 97. 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 98. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other
22 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
23 time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
25 CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

11 106. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
12 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
13 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
14 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's
15 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
16 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
17 statutory costs.

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19 **FOURTH CAUSE OF ACTION**

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

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

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

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

27 108. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT
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1 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
2 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
3 Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR
4 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
5 duties for the legally required off-duty meal periods. As a result of their rigorous work
6 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from
7 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
8 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
9 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
10 by DEFENDANT's business records. As a result, PLAINTIFFS and other members of the
11 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
12 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

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

9 116. Cal. Lab. Code § 2802 provides, in relevant part, that:

10 An employer shall indemnify his or her employee for all necessary expenditures
11 or losses incurred by the employee in direct consequence of the discharge of his
12 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.

13 117. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
14 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
15 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
16 benefit. DEFENDANT fails to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
17 CLASS members for expenses which include, but are not limited to, costs related to using their
18 personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's
19 policy, practice and procedure is to not reimburse PLAINTIFFS and the CALIFORNIA
20 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
21 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
22 These expenses are necessary to complete their principal job duties. These expenses are
23 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
24 conduct to assert any waiver of this expectation. Although these expenses are necessary
25 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
26 DEFENDANT fails to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR
27 SUB-CLASS members for these expenses as an employer is required to do under the laws and
28

1 regulations of California.

2 118. PLAINTIFFS therefore demands reimbursement for expenditures or losses
3 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
4 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT

5 **SEVENTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 226]**

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

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

13 120. Cal. Labor Code § 226 provides that an employer must furnish employees with
14 an “accurate itemized” statement in writing showing:

15 (1) gross wages earned,

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

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

22 (4) all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,

24 (5) net wages earned,

25 (6) the inclusive dates of the period for which the employee is paid,

26 (7) the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number or an
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1 employee identification number other than a social security number may be shown on
2 the itemized statement,

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

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

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4 **EIGHTH CAUSE OF ACTION**

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

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

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

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

12 124. Cal. Lab. Code § 200 provides that:

13 As used in this article:

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

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

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

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

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her wages
28 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.

29 127. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR
30 SUB-CLASS Members' employment contract.

1 128. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction, in
3 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
4 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.

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

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

14 **NINTH CAUSE OF ACTION**

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

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

17 **(By Plaintiff Jacqueline Marshall and Against All Defendants)**

18 131. PLAINTIFFS incorporate by reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

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

3 133. Plaintiff Jacqueline Marshall, and such persons that may be added from time to
4 time who satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to herself and all individuals who are or previously were employed by Defendants
7 PHI Air Medical, LLC and/or PHI Health, LLC in California and classified as non-exempt
8 employees ("AGGRIEVED EMPLOYEES") during the time period of January 11, 2020
9 through October 27, 2021 (the "PAGA PERIOD").

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

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

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

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

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
2 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
3 action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation due PLAINTIFFS and the other members
6 of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) Meal and rest period compensation pursuant to California Labor Code Section
10 226.7 and the applicable IWC Wage Order;
- 11 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
12 in which a violation occurs and one hundred dollars (\$100) per each member of
13 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
14 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
15 an award of costs for violation of Cal. Lab. Code § 226;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFFS and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit; and,
- 21 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-
22 CLASS as a penalty from the due date thereof at the same rate until paid or until
23 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
- 26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.
- 28

1 4. On all claims:

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

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

4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
5 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
6 §2802.

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8 Dated: November 10, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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12 By: 
13 Norman B. Blumenthal
14 Attorneys for Plaintiffs
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1 **DEMAND FOR A JURY TRIAL**

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

3
4 Dated: November 10, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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6
7 
8 By: _____
9 Norman B. Blumenthal
10 Attorneys for Plaintiffs