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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PABLO MACIAS, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

ABM ELECTRICAL & LIGHTING
SOLUTIONS, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00033639-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

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

6 **INTRODUCTION**

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

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

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

23 **THE PARTIES**

24 4. Defendant ABM Electrical & Lighting Solutions, Inc. (“DEFENDANT”) is a
25 Corporation that at all relevant times mentioned herein conducted and continues to conduct
26 substantial business in the state of California.

27 5. DEFENDANT is a leading provider of facility solutions. DEFENDANT’s
28

1 comprehensive capabilities include electrical & lighting solutions provided through stand-alone
2 or integrated solutions.

3 6. PLAINTIFF was employed by DEFENDANT in California from August of 2019
4 to April of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
5 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
6 of minimum and overtime wages due for all time worked.

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

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

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

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

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

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
19 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
20 was from time to time interrupted by work assignments while clocked out for what should have
21 been PLAINTIFF's off-duty meal break. DEFENDANT's policy and practice not to pay
22 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
23 DEFENDANT's business records.

24 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
26 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
28 for more than five (5) hours during some shifts without receiving a meal break. Further,

1 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
2 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
3 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
4 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
5 and in accordance with DEFENDANT's corporate policy and practice. DEFENDANT failed
6 to maintain adequate staffing levels while increasing the production levels for each employee
7 at the busy airports they operated at.

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

28 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay

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

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

25 16. In the course of their employment PLAINTIFF and other AGGRIEVED
26 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
27 personal cellular phones as a result of and in furtherance of their job duties as employees for
28 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost

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

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

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

28 19. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED

1 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
2 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
3 AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest
4 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
5 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
6 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated
7 the California Labor Code and regulations promulgated thereunder as herein alleged.

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

13 14 **JURISDICTION AND VENUE**

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

18 26. On July 9, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
19 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
20 the specific provisions of this code alleged to have been violated as required by Labor Code §
21 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
22 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
23 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
24 action under PAGA pursuant to Section 2699 as the proxy of the State of California with
25 respect to all AGGRIEVED EMPLOYEES as herein defined.

26 27. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record

1 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
2 to pay overtime wages, (e) failed to pay wages when due, and (f) failed to reimburse employees
3 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
4 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
5 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
6 the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
7 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
8 Code Private Attorney General Act of 2004 as the representative of the State of California for
9 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

10
11 **PRAYER FOR RELIEF**

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

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

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

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

20
21 Dated: September 23, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

22
23
24 By: /s/ Norman Blumenthal
25 Norman B. Blumenthal
26 Attorneys for Plaintiff

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

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

July 9, 2020

CA2134

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

ABM Electrical & Lighting Solutions, Inc
Certified Mail #70191120000066524752
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant ABM Electrical & Lighting Solutions, Inc. in California and classified as non-exempt employees during the time period of July 9, 2019 until a date as determined by the Court. Our offices represent Plaintiff Pablo Macias (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant ABM Electrical & Lighting Solutions, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a Lighting Installer from August of 2019 to April of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time

pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PABLO MACIAS, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ABM ELECTRICAL & LIGHTING
SOLUTIONS, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;

3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et*
seq.;

4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

5. FAILURE TO PROVIDE REQUIRED REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

6. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802;

7. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226;

8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE §§
201, 202 AND 203; 9. WRONGFUL

9. TERMINATION IN VIOLATION OF PUBLIC
POLICY [LABOR CODE §§ 1102.5 AND 6310]; and,

10. RETALIATION IN VIOLATION OF LABOR
CODE § 1102.5, *ET SEQ.*

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant ABM Electrical & Lighting Solutions, Inc. (“DEFENDANT”) is a
7 Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT is a leading provider of facility solutions. DEFENDANT’s
10 comprehensive capabilities include electrical & lighting solutions provided through stand-alone
11 or integrated solutions.

12 3. PLAINTIFF was employed by DEFENDANT in California from August of 2019
13 to April of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

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

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

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

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

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

23 **THE CONDUCT**

24
25 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF

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

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

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

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

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

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

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

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

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

1 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
2 statements which violated Cal. Lab. Code § 226.

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

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

23 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
24 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
25 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
26 did not have a policy or practice which provided timely off-duty meal and rest breaks to
27 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
28 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved

1 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
2 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
3 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
4 missed meal and rest periods and/or minimum and overtime wages due, the wage statements
5 issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code
6 Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him
7 and DEFENDANT has failed to pay any penalty wages owed to him under California Labor
8 Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
9 the sum or value of \$75,000.

10 11 **JURISDICTION AND VENUE**

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

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

21 22 **THE CALIFORNIA CLASS**

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

1 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
2 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
3 (\$5,000,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:
- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA CLASS; and/or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA CLASS which would as a practical matter be
28 dispositive of interests of the other members not party to the

1 adjudication or substantially impair or impede their ability to
2 protect their interests.

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

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

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

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

- 1 2) Class certification will obviate the need for unduly duplicative
2 litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,
- 7 B. Adjudications with respect to individual members of the
8 CALIFORNIA CLASS would as a practical matter be
9 dispositive of the interests of the other members not parties
10 to the adjudication or substantially impair or impede their
11 ability to protect their interests;
- 12 3) In the context of wage litigation because a substantial number of
13 individual CALIFORNIA CLASS Members will avoid asserting
14 their legal rights out of fear of retaliation by DEFENDANT, which
15 may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to
17 assert their claims through a representative; and,
- 18 4) A class action is superior to other available methods for the fair
19 and efficient adjudication of this litigation because class treatment
20 will obviate the need for unduly and unnecessary duplicative
21 litigation that is likely to result in the absence of certification of
22 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

1 CLASS;

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

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

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

8
9 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

1 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

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

7 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

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

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

- 26 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
28 CLASS all wages due for overtime worked, for which DEFENDANT is

1 liable pursuant to Cal. Lab. Code § 1194;

2 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
3 accurately pay PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS the correct minimum wage pay for which
5 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

6 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
8 itemized statement in writing showing the corresponding correct amount
9 of wages earned by the employee;

10 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
13 meal breaks and the legally required off-duty rest breaks;

14 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
15 when an employee is discharged or quits from employment, the employer
16 must pay the employee all wages due without abatement, by failing to
17 tender full payment and/or restitution of wages owed or in the manner
18 required by California law to the members of the CALIFORNIA LABOR
19 SUB-CLASS who have terminated their employment; and,

20 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA LABOR SUB-CLASS members with necessary
22 expenses incurred in the discharge of their job duties.

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

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

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

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

- 26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of
28 separate actions by individual members of the CALIFORNIA LABOR

SUB-CLASS will create the risk of:

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

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

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of

1 economic losses sustained by the individual CALIFORNIA
2 LABOR SUB-CLASS Members when compared to the substantial
3 expense and burden of individual 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 LABOR SUB-
8 CLASS, which would establish incompatible standards of
9 conduct for the DEFENDANT; and/or,

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

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

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

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

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

ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

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

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

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

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

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

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

Cal. Bus. & Prof. Code § 17203.

42. By the conduct alleged herein, DEFENDANT has engaged and continues to

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

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

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

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

26 46. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
27 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed
28 to provide all legally required meal breaks to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

26 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
27 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
28 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from

engaging in any unlawful and unfair business practices in the future.

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

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

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

58. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including minimum wage compensation and interest thereon, together with the costs of suit.

2 59. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
3 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
4 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
5 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS.

7 60. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
9 result of implementing a uniform policy and practice that denies accurate compensation to
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
11 minimum wage pay.

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

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

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

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

1 according to proof at trial.

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

28 74. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,

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

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

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

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

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

28 79. DEFENDANT failed to accurately pay the PLAINTIFF and the other members

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

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

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

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

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

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

11
12 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

17 18 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

18 19 **SIXTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code § 2802]**

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

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

27 93. Cal. Lab. Code § 2802 provides, in relevant part, that:

28 An employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the
2 discharge of his or her duties, or of his or her obedience to the directions of
3 the employer, even though unlawful, unless the employee, at the time of
4 obeying the directions, believed them to be unlawful.

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

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

27 ///

28 ///

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1 **SEVENTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

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

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

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

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

98. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA CLASS with complete and accurate wage statements
which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
Code § 226 provides that every employer shall furnish each of his or her employees with an
accurate itemized wage statement in writing showing, among other things, gross wages
earned and all applicable hourly rates in effect during the pay period and the corresponding
amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section
226 by failing to identify the correct rates of pay and number of hours worked, including for

1 the “Retro” item of pay, which is a wage payment. Aside, from the violations listed above
2 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
3 that lists all the requirements under California Labor Code 226 *et seq.* As a result,
4 DEFENDANT from time to time provided PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

18 19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

27 101. Cal. Lab. Code § 200 provides that:

28 As used in this article:

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

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

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

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

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

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

17 105. Cal. Lab. Code § 203 provides:

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

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

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

1 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
2 plus interest and statutory costs as allowed by law.

3
4 **NINTH CAUSE OF ACTION**

5 **Wrongful Termination**

6 **[Wrongful Termination in Violation of Public Policy]**

7 **[Discrimination against employee for filing complaint or otherwise exercising rights in**

8 **Violation of Cal. Lab. Code §§ 1102.5 and 6310]**

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

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

12 109. In retaliation for complaining to DEFENDANT of DEFENDANT's violations
13 of safety on the worksite, DEFENDANT retaliated against and wrongfully discharged
14 PLAINTIFF from employment, in violation of Cal. Lab. Code §§ 1102.5 and 6310.
15 DEFENDANT committed safety standard violations, including but not limited to
16 electrocution hazards at PLAINTIFF's assigned work locations, and when PLAINTIFF
17 complained of such violations to DEFENDANT, PLAINTIFF was subsequently terminated.

18 110. Throughout PLAINTIFF's employment with DEFENDANT, DEFENDANT
19 failed to properly maintain standard safety measures at job sites, including but not limited to
20 electrocution hazards. As such, PLAINTIFF was placed in a constant risk of harm while
21 performing his job duties for DEFENDANT. PLAINTIFF informed DEFENDANT about
22 such safety issues, but to no avail. In or around February and March of 2020, and
23 continuing through out the rest of PLAINTIFF's employment, PLAINTIFF engaged in
24 protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain
25 compliant safety standards, including, but not limited to, DEFENDANT's failure to
26 maintain the safety of their worksite as it pertained to electrocution hazards. As a direct
27 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated
28 against PLAINTIFF by terminating his employment in April of 2020.

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

112. Cal. Labor Code § 1102.5, et seq. prohibits an employer from taking an adverse employment action against an employee for terminating an employee's employment for raising complaints of illegality and/or belief that the employee may disclose illegality.

113. Cal. Labor Code § 6310 prohibits discrimination against employees for filing complaints or otherwise exercising their rights by complaining of illegal employment practices.

114. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of his employment, in retaliation for PLAINTIFF's complaining to DEFENDANT of DEFENDANT's unlawful employment practices.

115. The wrongful termination of the employment of PLAINTIFF was and is a substantial factor in causing harm to PLAINTIFF.

TENTH CAUSE OF ACTION

Retaliation

[Violation of Cal. Lab. Code § 1102.5, *et seq.*]

(By PLAINTIFF Against All Defendants)

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

117. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against

1 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that
2 the employee may disclose illegality.

3 118. Throughout PLAINTIFF's employment with DEFENDANT, DEFENDANT
4 failed to properly maintain standard safety measures at job sites. As such, PLAINTIFF was
5 placed in a constant risk of harm while performing his job duties for DEFENDANT.
6 PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. In or around
7 February and March of 2020, and continuing through out the rest of PLAINTIFF's
8 employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of
9 DEFENDANT's failure to maintain compliant safety standards, including, but not limited
10 to, DEFENDANT's failure to protect PLAINTIFF from electrocution hazards. As a direct
11 consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated
12 against PLAINTIFF by terminating his employment in April of 2020.

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

17 120. As a proximate result of DEFENDANT'S willful, knowing, and intentional
18 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
19 humiliation, emotional distress, and mental and physical pain and anguish, all to his damage
20 in a sum according to proof.

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

24 122. DEFENDANT'S misconduct was committed intentionally, in a malicious,
25 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
26 against defendants.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
22 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
23 statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
28 an award of costs for violation of Cal. Lab. Code § 226;

- 1 D) The wages of all terminated employees from the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
4 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
5 the applicable IWC Wage Order;
6 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
8 costs of suit; and,
9 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
10 1197.

11 3. On behalf of PLAINTIFF for the Ninth and Tenth Causes of Action:

- 12 A) For all special damages which were sustained as a result of DEFENDANT's
13 conduct, including, but not limited to, back pay, front pay, lost compensation and
14 job benefits that PLAINTIFF would have received but for the retaliatory practices
15 of DEFENDANT; and,
16 B) For all exemplary damages, according to proof, which were sustained as a result
17 of DEFENDANT's conduct.

18 4. On all claims:

- 19 A) An award of interest, including prejudgment interest at the legal rate;
20 B) Such other and further relief as the Court deems just and equitable; and,
21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
22 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
23 §2802.

24 Dated: June 17, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

25
26
27 By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: June 17, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff